

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No. 23 of 2020**

(Arising out of interim order dated 02.01.2020 passed by the learned Single Judge in WPL No. 259 of 2019)

- Radheshyam Yadav S/o Baldau Yadav Aged About 50 Years R/o Imlibhata, Arvind Nagar Bandhwarapara, Sarkanda, Bilaspur , Police Station Sarkanda District Bilaspur Chhattisgarh.

---- Appellant**Versus**

1. State of Chhattisgarh Through Secretary, Department of Water Resources, Mantralaya Mahanadi Bhawan , Atal Nagar, District Raipur Chhattisgarh.
2. Chief Engineer Jal Sanaadhan Vibhag, Bilaspur , District Bilaspur Chhattisgarh.
3. Executive Engineer Hasdeo Nahar Prabandh Sambhag Janjgir District Janjgir Champa Chhattisgarh.
4. Sub Divisional Officer Minimata Bango Canal Sub Division No. 17, Bilaspur Chhattisgarh.

---- Respondents

For Appellant	:	Mr. S.P. Kale and Mr. K.P.S. Gandhi, Advocates
For Respondents/State	:	Mr. S.C. Verma, Advocate General with Mr. Chandresh Shrivastava, Deputy AG.

Hon'ble Shri P.R. Ramachandra Menon, Chief Justice
Hon'ble Shri Parth Prateem Sahu, Judge

Judgment on Board**Per, P.R. Ramachandra Menon, Chief Justice****10/01/2020**

1. Interim order passed by the learned Single Judge, whereby the IA seeking for stay of the award passed by the Labour Court came to be dismissed, is put to challenge by the writ petitioner.

2. Heard Mr. S.P. Kale, the learned counsel for the Appellant as well as the learned counsel appearing for the State.
3. The sequence of events reveals that the Appellant was working as a Chowkidar on daily wages in the Respondent establishment. While so, his service was put to an end to, pursuant to which an Industrial Dispute was raised. The appropriate Government referred the matter for adjudication to the Labour Court. On culmination of the trial, an award was passed by the Labour Court, whereby reinstatement was ordered, however, without backwages.
4. The above award passed by the Labour Court was sought to be challenged by the Department concerned before this Court by filing writ petition as WPL No.2828 of 2011. After hearing both the sides, the learned Single Judge observed that the Labour Court had simply arrived at a finding that the workman was entitled to be reinstated; without arriving at a finding as to whether the course pursued by the employer would actually amount to 'retrenchment' as defined under the Industrial Disputes Act, 1947 or not. It was also observed that the Labour Court ought to have arrived at a finding whether the employee had worked for a period of 240 days within the preceding 12 months so as to come within the purview of Section '25B' of Industrial Disputes Act, 1947 and in turn to have the benefit of retrenchment as claimed by him. It was accordingly, that the award was set aside and the matter was remanded to the Labour Court for adjudication afresh. 'Status quo' was directed to be maintained, permitting the employee to continue in service; till the matter was finalized, as above.

5. Pursuant to remand, the matter was considered by the Labour Court with liberty to the parties to adduce evidence. By virtue of the settled position of law, it is the duty of the employee, to put in evidence and substantiate that he was having a continuous service of 240 days in the preceding 12 months. On completion of the evidence, the Labour Court found that no such effort was taken by the employee and he had not proved that he was having a continuous service of 240 days. Accordingly, an award was passed, virtually repealing the claim and this was sought to be challenged by the Appellant by filing the writ petition seeking to set aside award and to have the relief granted. Along with the writ petition, an I.A. was also filed, seeking for stay of the award, which was considered by the learned Single Judge and the interim relief was declined; which is put to challenge in this appeal.
6. The learned counsel for the Appellant submits that there is material irregularity and illegality insofar as the Labour Court is not having jurisdiction to pass the award by virtue of the change in situation, particularly, as sought to be projected in the writ petition. The learned counsel also tried to make a reference to the subsequent notification issued by the Government as to the change of the officer concerned, who was holding the office of the Labour Court. This Court does not find it necessary to deal with these aspects, as it is always open for the Appellant to have it projected and highlighted before the learned Single Judge where the writ petition is pending; to be dealt with in accordance with law.

7. With regard to scope of the appeal, obviously it is against an interim order, whereby the interim relief for stay was rejected. Whether the appeal will lie in the said circumstance is the first question. Appeal is a statutory remedy and as such, it can be pursued only in terms of the statute. Section 2(1) of the Chhattisgarh High Court (Appeal to Division Bench) Act, 2006 (for short, 'the Act, 2006') provides remedy by way of appeal. Proviso to Section 2(1) of the Act, 2006 is in the following terms :

“2. Appeal to 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.”

From the above, it is clear that no appeal will lie against an interlocutory order passed by the Court or an order passed in exercise of supervisory jurisdiction under Article 227 of the Constitution of India.

8. In the said circumstance, whether the order dated 02.01.2020 passed in I.A. will amount a final order is only a question. The scope of the above proviso under Section 2(1) of the Act, 2006 had come up for consideration before a Full Bench of this Court and the law was declared as per judgment dated 25.01.2017 in Writ Appeal No. 255 of 2016 (*Ajay Gupta vs. State of Chhattisgarh and Others*). The operative portion of the said order reads as follows :

"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 which cannot be undone at the time of final hearing, cannot be termed to be interlocutory orders and in such eventuality, an appeal would lie against such orders."

9. The above order clearly says that appeal will be maintainable only if such order would amount to finality. The rejection of the interim stay does not amount to any finality at all, as the main issue (with regard to challenge raised against the award passed by the Labour Court) is still pending consideration in the writ petition. That apart, if the writ petitioner ultimately succeeds, it is always open for the learned Single Judge to mold the relief in appropriate terms.
10. In the said circumstance, the appeal is dismissed as not maintainable, without prejudice to the rights and liberties of the Appellant to substantiate the merit involved with reference to the main prayers sought for in the writ petition.
11. Considering the submissions made by the learned counsel for the Appellant, we express our earnest hope and desire that the learned Single Judge may finalize the writ petition, as expeditiously as possible.

Sd/-
(P.R. Ramachandra Menon)
 Chief Justice

Sd/-
(Parth Prateem Sahu)
 Judge