

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Judgement Reserved on 06.03.2020****Judgment Delivered on 29/5/2020****WA No. 218 of 2020**

(Arising out of order dated 9.1.2020 passed by learned Single Judge in WPL No.145/2019)

- D.P. Saraf S/o Late K.A. Saraf Aged About 63 Years Ex Chief Store Keeper Quarter No. E. 22, 15 Block Colony Korba (CG)

---- Appellant**Versus**

1. Sub Area Manager, S.E.C.L. Rajgamaar Project Korba Area, Post Office Rajgamaar, District Korba (CG)
2. The Appellate Authority under Payment of Gratuity Act 1972 and the Deputy Chief Commissioner (C) Government of India Ministry of Labour and Employment, Raipur (CG)
3. The Controlling Authority and Regional Labour Commissioner (C), Bilaspur Under Payment of Gratuity Act 1972 Bilaspur (CG)

---- Respondents

For Appellant	:	Appellant in Person.
For Respondents	:	Shri Vinod Deshmukh, Advocate on behalf of Shri Vivek Verma, Advocate.

Hon'ble Shri P. R. Ramachandra Menon, CJ**Hon'ble Shri Parth Prateem Sahu, J****CAV ORDER****Parth Prateem Sahu, J**

1. Challenge in this appeal is to the order dated 9.1.2020 passed by learned Single Judge in WPL No.145/2019 extending interim order dated 1.7.2019 till the next date of hearing.
2. The appellant, appearing in person, submits that after dismissal of appeal filed before the Appellate Authority against the order

dated 14.3.2018 passed by the Assistant Labour Commissioner, under the Payment of Gratuity Act, 1972, Raipur by which appellant has been awarded gratuity of Rs.10,00,000/- with 10% simple interest w.e.f. 30.6.2017, the respondent SECL preferred a writ petition before the High Court along with an application for grant of interim relief. While admitting the said writ petition on 1.7.2019, an ex-parte interim order was passed to the effect that interest awarded by the Assistant Labour Commissioner, Raipur shall remain stayed. After service of notice of writ petition, on 30.7.2019 appellant filed application dated 25.7.2019 under Article 226 (3) of the Constitution of India for vacation of ex-parte interim order dated 1.7.2019, which is still pending consideration. On 9.1.2020 when the said writ petition came up for hearing, the learned Single Judge extended the interim order dated 1.7.2019 till the next date of hearing, which could not have been ordered for the reason that ex-parte interim order passed on 1.7.2019 has lost its efficacy in view of the provision of Article 226 (3) of the Constitution of India, according to which, if application for vacation of ex-parte interim order is not so disposed of, the interim order shall, on the expiry of period of two weeks from the date of filing of such an application, stand vacated. He also submits that respondent SECL did not file any fresh application for grant of interim relief and in absence thereof, the learned Single Judge ought not to have passed order in favour of respondent SECL directing continuance of interim order passed earlier till the next date of hearing. It is also pointed out that

gratuity and interest on delayed payment of gratuity is a statutory right, but till date the appellant has not received single penny of gratuity. He submits that he had approached the competent authority for disbursal of gratuity amount but the same was denied to him saying that consent of respondent SECL is necessary for withdrawal.

3. Per contra, learned counsel for respondent SECL submits that by virtue of interim order dated 1.7.2019 only interest part has been stayed and not the payment of principal amount of gratuity, which has already been deposited by the respondents with the competent authority. He points out that on 9.1.2020 interim order dated 1.7.2019 was extended in presence of appellant, who appears in person, but he did not oppose extension of interim order. So far as the relief claimed by appellant in this appeal i.e. payment of gratuity along with interest @ 10% p.a., this issue is pending adjudication before the learned Single Judge in WPL No.145/2019.

4. We have heard both the sides and perused the record.
5. Article 226 (3) of the Constitution of India envisages that if application for vacation of ex-parte interim order is not disposed off within a period of two weeks from the date on which it is filed, the ex-parte interim order shall stand vacated automatically. The High Court while exercising powers under Article 226 of the Constitution of India has jurisdiction to pass a

bi-parte interim order even after filing of application for vacation of ex-parte interim order. Period between which ex-parte interim order stand vacated, after expiry of period as prescribed under Article 226 (3) of the Constitution of India, then the effect will be only that, during that period the order will not have any binding effect as it stands automatically vacated.

6. Here in this case, perusal of the record of writ petition shows that application for grant of interim relief was heard on 1.7.2019 and it was not disposed of in very specific term. When the case was listed subsequently on 9.1.2020, the learned Single Judge extended the interim order passed earlier till the next date of hearing, which is within his jurisdiction.
7. As regards the submission made by appellant that he has not received any amount of gratuity till date, the appellant is free to approach competent authority where respondent No.1 has deposited principal amount of gratuity and to file appropriate application for withdrawal of gratuity amount so deposited by respondent No.1. Even the learned Single Judge in the interim order dated 1.7.2019 in very clear terms mentioned that interest part of the amount awarded shall remain stayed and the respondents shall release the principal amount of gratuity to appellant herein. Thus, the appellant is free to approach authority concerned for withdrawal of principal amount of gratuity in view of the order dated 1.7.2019.
8. Apart from above, present appeal is filed against interim order

passed by learned Single Judge in WPL No.145/2019. Writ appeal is a statutory remedy provided under the CG High Court (Appeal to Division Bench) Act, 2007 and proviso to Section 2 of the Act of 2007 clearly bars appeal against an interim order. In view of specific bar under the law, the instant appeal is not maintainable.

9. So far as the submission of appellant that interest @ 10% p.a. may be awarded on the principal amount of gratuity is concerned, the said issue is pending consideration before the learned Single Judge and the same can be decided in that proceeding itself.
10. In view of above, we do not find any tenable ground for entertaining this appeal, the same is liable to be dismissed and is hereby dismissed.

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

Sd/-
(Parth Prateem Sahu)
Judge

roshan/-