

HIGH COURT OF CHHATTISGARH, BILASPUR

WA No. 228 of 2020

(Arising out of Order dated 29.01.2020 in WPL-236 of 2019)

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

---- Appellant

Versus

1. General Manager (P And A) South Eastern Coal Field Limited Seepat Road, Bilaspur, District Bilaspur Chhattisgarh
2. Presiding Officer Under Industrial Dispute Act 1947 Cum Labour Court Bilaspur, District Bilaspur Chhattisgarh

-----Respondents

For Appellant	: Shri DP Saraf, Appellant in person
For Respondents/SECL	: Shri Vinod Deshmukh, Advocate

Hon'ble Shri PR Ramachandra Menon, Chief Justice &
Hon'ble Shri Justice Parth Prateem Sahu
Order on Board

Per PR Ramachandra Menon,CJ

06.03.2020

1. Appeal has been filed by the appellant, who is appearing in person, being aggrieved of the order dated 29.01.2020 passed by the learned Single Judge, whereby the interim relief granted earlier has been ordered to be continued till the next date of hearing.
2. Heard Shri DP Saraf, the appellant in person and Shri Vinod Deshmukh, learned counsel appearing for the respondents.
3. The sum and substance of the grievance projected by the appellant is that the respondent/Management had filed a petition in the industrial dispute pending before the Labour Court, Bilaspur (in case No.3/ID CGIT/Ref/2017) for permission to be represented through a Lawyer.

Since no consent was given from the part of the Worker/Union, the Labour Court declined to grant permission, which has been subjected to challenge in WPL- 236 of 2019. When the matter came up for consideration on 15.11.2019, an *ex-parte* interim stay was granted. On getting notice, the appellant appeared and filed IA -2 of 2019 to vacate the interim stay order on 13.12.2019, besides seeking for serving a copy of the petition in 'Hindi', so as to enable him to raise his defence in a proper and effective manner. The said IA was never listed before the Bench for quite long and by virtue of the mandate under Article 226(3) of the Constitution of India, the interim order is liable to be deemed as having vacated. The matter came up for further consideration only on 29.01.2020, when the interim order granted earlier was ordered to be continued till the next date of hearing. This, according to the appellant, is not correct or sustainable in law and that it was passed without hearing the appellant and hence subjected to challenge in this appeal.

4. The order passed by the Court on 29.01.2020 reads as follows:

“Mr DP Saraf, respondent who appears in person prays for time to file reply.

As prayed, list it after four weeks.

Interim relief granted earlier shall continue, till the next date of hearing.”

5. From the above, it is seen that on 29.01.2020, the appellant who was the 1st respondent had appeared in person and sought for time to file reply, which presumably made the learned Single Judge to pass an order on that date, holding that the interim relief granted earlier would continue till the next date of hearing. Whether it was an extension of the order

dated 15.11.2019 so as to cover up the gap between the date of expiry of the order pursuant to filing of IA to vacate the same in terms of Article 226(3) of the Constitution of India, or whether it was to be treated as a fresh order as passed on 29.01.2020, though making a reference to the order dated 15.11.2019 and the relative consequences are all matters to be considered by the learned Single Judge, based on the submissions to be made by the parties concerned. So also, whether the order passed by the Labour Court with reference to Section 36(4) of the Industrial Dispute Act, 1947 and also as to the right of the Management to be represented through a lawyer by virtue of notification under Section 30 of the Advocates Act 1961, are also matters to be looked into for effective adjudication; with regard to which, we do not intend to express anything on merit.

6. Coming to nature of challenge herein, as mentioned already, it is against the 'interim order' dated 29.01.2020. The question is, whether appeal is maintainable against an interim order ?

7. Appeal is always a statute remedy and Section 2 (1) of the Chhattisgarh High Court (Appeal to Division Bench) Act, 2006 provides remedy by way of appeal against the order/verdict passed by learned Single Judge in Article 226 proceedings. The said provision is extracted below for convenience of reference:

“2. Appeal to the 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.”

8. Proviso 2(1) of the Act, 2006 clearly says that no appeal will be maintainable in respect of an order passed under Article 227 of the Constitution of India. If it is an interim order under Article 226, the provision still says that no appeal is maintainable against an interim order passed in a proceeding under Article 226.

9. The scope of the said proviso had come up for consideration before a Full Bench of this Court and as per the judgment passed in Writ Appeal 255 of 2016, it was clearly held as follows:

“In view of the majority judgment rendered, the question referred to the Full Bench is answered in the following terms:

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.”

10. From the above, it is clear that unless the interim order is having the effect of finality, no appeal is maintainable. This being the position, we hold that, this appeal is not maintainable and hence it stands dismissed.

11. The parties are at liberty to raise appropriate pleadings before the learned Single Judge, where the issue is pending and address the Court with regard to the rival contentions.

12. No opinion is mentioned regarding merits of the case.

Sd/-
(PR Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge