

AFR

HIGH COURT of CHHATTISGARH, BILASPUR**WPS No. 2162 of 2020**

1. Steel Authority of India Limited through its Chairman, Ispat Bhawan Lodhi Road, New Delhi, 110011. (*wrongly mentioned in the impugned order as Chairman and Managing Director*)
2. The Chief General Manager (Personnel), Steel Authority of India Limited, Bhilai Steel Plant Bhilai, District Durg C.G. 490001

-----**Petitioners****VERSUS**

1. Union of India, through its Secretary, Ministry of Steel and Power, Udyog Bhawan Dr. Maulana Azad Road, New Delhi 110011
2. Santosh Kumar Bhashkar S/o Shri Johan Ram Bhashkar DOB 14.10.1965, unemployed, R/o 87/E, Risali Sector, Bhilai, District Durg 490006

-----**Respondents**

For Petitioners	:	Mr. Ashish Surana, Advocate & Mr. Shailendra Shukla, Advocate
For Respondent No. 2	:	Mr. Vinay Pandey, Advocate
For Respondent No. 1	:	Mr. B.Gopa Kumar, Asst. Solicitor General.

Hon'ble Shri P.R. Ramachandra Menon, Chief Justice**Hon'ble Shri Parth Prateem Sahu, Judge****Judgment on Board****Per P.R. Ramachandra Menon, C.J.****01/06/2020**

1. The petitioners who are Respondents in the Original Application (O.A.) No. 203/296/2020 before the Central Administrative Tribunal, Jabalpur Bench, are before this Court challenging Annexure P-1 interim order dated 08-05-2020 passed by the Tribunal, staying the order dated 04-03-2020 terminating the 2nd respondent from service, despite the fact that it has already come into force and further that the Tribunal has virtually granted the 'final relief' itself, in the form of 'interim relief', which is not correct or sustainable in law.
2. Heard Dr. N.K. Shukla, learned Senior counsel appearing for the petitioners, Mr. Vinay Pandey, learned counsel appearing for respondent No. 2 and Mr. B.Gopa Kumar, learned Assistant Solicitor General representing the 1st respondent-Union of India.

3. The 2nd respondent commenced his service in the Bhilai Steel Plant of the petitioners on 06-04-1993 as NMR worker. The job was secured on the strength of a Social Status Certificate obtained by him as a member of the Schedule Caste (Mahar) community, issued way back in September, 1984. However, the caste status was a subject matter of dispute and finally, the competent authority i.e. the High Power Caste Scrutiny Committee constituted under the relevant provisions of law found that the 2nd respondent/ applicant in the O.A. was actually not belonging to Schedule Caste community and accordingly, the social status certificate was cancelled as per Annexure P-2 proceedings dated 25-01-2020. The finding/ report of the High Power Scrutiny Committee has already been subjected to challenge by the 2nd respondent, by filing Writ Petition (C) 842/2020, which came up for consideration before a learned Single Judge of this Court on 05-03-2020, wherein Annexure P-4 order has been passed granting interim stay. The 2nd respondent had also challenged the order of termination from service based on the finding of the Scrutiny Committee by filing WPS No. 1718/2020 before this Court, which came to be dismissed as withdrawn, as per Annexure A-5 order dated 16-03-2020, observing that the remedy lay elsewhere i.e. before the Central Administrative Tribunal. It was accordingly, that O.A. No. 203/296/2020 was filed by the 2nd respondent before the Central Administrative Tribunal, where the matter is pending.
4. Along with the main prayer to set aside the order dated 04-03-2020 (putting an end to the service of the applicant), he has also sought for an interim relief so as to stay the said order and to permit him to resume work. This was considered by the Tribunal on 08-05-2020, when serious objection was raised by the respondent-employer to the effect that the order had already come into effect and further that the interim relief sought for was virtually the final relief itself and hence cannot be granted. Reliance was sought to be placed on verdict passed by the Apex Court on the relevant aspects, including that the mischief cannot be perpetuated as held in the matter of **Chairman and Managing Director, Food Corporation of India and others v. Jagdish Balram Bahira and others**

reported in **(2017) 8 SCC 670**. After hearing, the Tribunal observed that the proceedings of the Scrutiny Committee and its effect had already been stayed by a learned Judge of this Court and in the said circumstance, the applicant was entitled to get the interim relief. This was based on the finding that the Tribunal did not find the interim relief prayed for as amounting to the final relief. It was accordingly, that interim stay was granted with respect to the order of termination from service (dated 04-03-2020); however making it clear that the interim relief will be automatically vacated, in case the stay granted by the learned Single Judge of this Court was vacated. This made the petitioners/ employer to feel aggrieved and hence the writ petition.

5. On hearing both the sides in detail (through video conferencing), we are of the view that we need not go into the merit of the caste certificate issued to the applicant or also as to the correctness in cancellation of appointment as the said two disputes are pending consideration before the appropriate Court/ Forum. The limited question is only with regard to the correctness and sustainability of the interim order passed by the Tribunal i.e. Annexure P-1 and whether the said interim relief amounts to any final relief or not?
6. For convenience of reference, the 'main reliefs' in the O.A., and the interim relief sought for are extracted below:

"8. RELIEF SOUGHT:-

It is, therefore, prayed that this Hon'ble Court may kindly be pleased to:-

- (8.1) Summon the entire record from the possession of the respondents for its kind perusal.
- (8.2) Set aside the order dated 04.03.2020 Annexure A/1.
- (8.3) Direct the respondents to **reinstate the applicant** with all consequential benefits.
- (8.4) Any other order/ orders, which this Hon'ble Court, deems fit and proper may also be passed;
- (8.5) Award cost of the litigation in favour of the applicant.

9. INTERIM RELIEF

That during pendency of the present original

application the effect and operation of the order dated 04.03.2020 Annexure A/1 may kindly be stayed and the respondents may kindly be directed **to permit the applicant to work** as Coil Binder cum Processing Hand (S-7 Grade) in the interest of justice.”

7. Obviously, one of the main reliefs sought for in the O.A. is to set aside the order dated 04-03-2020, whereby service of the applicant has been put an end to. This order is based on the cancellation of the Social Status Certificate as per the relevant proceedings of the High Power Scrutiny Committee; correctness of which has been subjected to challenge and it has been stayed by a learned Single Judge of this Court as per Annexure P-4 order as mentioned above. The learned Judge has made it clear in the said order, that no opinion was being expressed with regard to the correctness of the order dated 04-03-2020 passed by the employer. The operative portion of the said order reads as follows.

“Considering the inquiry report submitted by the Research Assistant under the Chhattisgarh State High Power Certification Scrutiny Committee Annexure P-5 dated 28.02.2019, this Court is of the opinion that prima facie, a strong case for grant of interim relief has been made out.

Accordingly, there shall be further stay of the effect and operation of the impugned order Annexure P-1 dated 25.01.2020 until further orders.

Counsel appearing for the respondent no. 2 submits that pursuant to Annexure P-1 dated 25.01.2020, the services of the petitioner have already been terminated whereby the appointment order has been cancelled vide order dated 04.03.2020.

This Court is not expressing any opinion on the order passed by the respondent no.2 so far as the cancellation of the appointment part is concerned.”

8. The 2nd Respondent/ applicant in the O.A., while seeking for a stay of the order dated 04-03-2020 as interim relief, also seeks for a positive direction to permit the applicant to work as Coil Binder cum Processing Hand (S-7 Grade); which means he is seeking to reinstate him as sought for under the 'main relief 8.3'. On conjoint reading of the main relief and the interim relief sought for, it is clearly revealed that a specific mandatory direction is sought for to permit the applicant to resume duty by reinstating him, which by itself shows that the service has already been dispensed with.

9. The undisputed facts reveal that the order of termination from service was passed on 04-03-2020; whereas the interim order passed by this Court in WPC 842/2020 (staying operation and further proceedings with reference to the order passed by the Scrutiny Committee) was only on the next day i.e. 05-03-2020. The order passed by the employer had already come into effect by this time and this being the position, the observation made by the Tribunal that the interim relief sought for is not the main relief, does not appear to be factually correct.
10. Coming to the legal issue i.e. whether the 'main relief' could be granted in the form of 'interim relief', the matter was considered elaborately by the Apex Court in the matter of **Assistant Collector of Central Excise, Chandan Nagar, West Bengal v. Dunlop India Ltd. and others** reported in (1985) 1 SCC 260. The verdict passed by the '3 Member Bench' deprecates the course/ practice, as contained in the 'opening paragraph', in the following words:

“It is indeed a great pity- and, we wish we did not have to say it but we are afraid we will be signally failing in our duty if we do not do so- some courts, of late, appear to have developed an unwarranted tendency to grant interim orders- interim orders with a great potential for public mischief – for the mere asking. We feel greatly disturbed. We find it more distressing that such interim orders, often ex parte and non-speaking, are made even by the High Courts while entertaining writ petitions under Article 226 of the Constitution, and in the Calcutta High Court, on oral application too. Recently in *Samarias Trading Co. Pvt. Ltd. v. S. Samuel*, (1984) 4 SCC 666, we had occasion to condemn and prohibit this practice of entertaining oral applications under Article 226 and passing interim orders thereon. In several other cases, *Siliguri Municipality v. Amalendu Das* (1984) 2 SCC 436, *Titaghur Paper Mills Co. Ltd. v. State of Orissa* (1983) 2 SCC 433, *Union of India v. Oswal Woollen Mills Ltd.* (1984) 2 SCC 646, *Union of India v. Jain Shudh Vanaspati Ltd.* C.A. No. 11450 of 1983, this Court was forced to point out how wrong it was to make interim orders so soon as an application was but presented, when a second thought (or a second's thought) would expose the impairment of the public interest and often enough the existence of a suitable alternative remedy. Despite the fact that we have set our face against interfering with interim orders passed by the High Courts and made it practically a rigid rule not to so interfere, we were constrained to interfere in these cases.”

A portion of 'paragraph 5' of the said verdict is also relevant to be extracted as given below:

“5. We repeat and deprecate the practice of granting interim order which practically give the principal relief sought in the petition for no better reason than that a prima facie case has been made out, without being concerned about the balance of convenience, the public interest and a host of other relevant considerations. ...

x	x	x	x	x
x	x	x	x	x
x	x	x	x	x

... In cases where denial of interim relief may lead to public mischief, grave irreparable private injury or shake a citizen's faith in the impartiality of public administration, a court may well be justified in granting interim relief against public authority. But since the law presumes that public authorities function properly and bona fide with due regard to the public interest, a court must be circumspect in granting interim orders of far-reaching dimensions or orders causing administrative, burdensome inconvenience or orders preventing collection of public revenue for no better reason than that the parties have come to the court alleging prejudice, inconvenience or harm and that a prima facie case has been shown. There can be and there are no hard and fast rules. But prudence, discretion and circumspection are called for. There are several other vital considerations apart from the existence of a prima facie case. There is the question of balance of convenience. There is the question of irreparable injury. There is the question of the public interest. There are may such factors worthy of consideration. ...”

11. The above verdict was relied on by a 'Two Member Bench' of the Apex Court and granting of 'final relief' in the form of 'interim relief' was deprecated in **Bank of Maharashtra v. Race Shipping & Transport Co. Pvt. Ltd. and another** reported in **(1995) 3 SCC 257**. 'Paragraph 11' of the said judgment reads as follows:

“11. Time and again this Court has deprecated the practice of granting interim orders which practically give the principal relief sought in the petition for no better reason than that a prima facie case has been made out, without being concerned about the balance of convenience, the public interest and a host of other considerations. [See: *Asstt. CCE v. Dunlop India Ltd.* (1985) 1 SCC 260; *State of Rajasthan v. Swaika Properties*, (1985) 3 SCC 217, 224]”

12. The learned Senior counsel for the petitioner places reliance on some other verdicts rendered by the Apex Court as well, as in **State of Haryana v. Suman Dutta** reported in (2000) 10 SCC 311, **Union of India and others vs. Modiluft Limited** reported in (2003) 6 SCC 65 and **State of Uttar Pradesh and others v. Sandeep Kumar Balmiki and others** reported in (2009) 17 SCC 555 to buttress the contention that the order of termination from service cannot be stayed and that the relief granted by the Tribunal by way of interim order virtually amounts to the final relief. Since there cannot be any dispute with regard to the law declared by the Apex Court that the final relief cannot be granted in the form of interim relief, we are of the firm view that the Tribunal has exceeded jurisdiction, so far as the relief granted as per Annexure P-1 dated 08-05-2020, styled as interim relief, amounts to one of the final reliefs itself.
13. In the said circumstance, Annexure P-1 order under challenge stands set aside. It is for the Tribunal to look into the correctness of the impugned order which is put to challenge in the O.A., and pass appropriate orders in accordance with law. It is made clear that the observations made by us are only with regard to the sustainability of the interim order passed by the Tribunal and not with regard to the merit of the order dated 04-03-2020 impugned in the O.A. We also do not express any opinion with regard to the correctness of the order passed by the Scrutiny Committee, which is put to challenge separately by the 2nd respondent in WPC No. 842/2020.

The writ petition stands allowed to the said extent.

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

Sd/-
(Parth Prateem Sahu)
 Judge