

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No. 319 of 2020**

(Arising out of order dated 17.12.2019 passed in Writ Petition (S) No.10692 of 2019 by the learned Single Judge)

1. South Eastern Coalfield Limited through the Chief Managing Director, Seepat Road, Bilaspur, Chhattisgarh (wrongly mentioned as Managing Director in WP)
2. South Eastern Coalfield Limited through Senior Manager (Kh)/Manager, Rajendra Under ground Mines, Sohagpur area, Post Khairha District Shahdol, Madhya Pradesh
3. South Eastern Coalfield Limited through Manager, Sohagpur area, P.O. Dhanpuri, District Shahdol, Madhya Pradesh
4. South Eastern Coalfield Limited through Supdt.(M)/Manager, Navgaon Underground Mines, Sohagpur area, District Shahdol, Madhya Pradesh

---- Appellants**Versus**

Abdul Jabbar S/o Amir Moh. @ Rahimuddin, aged about 59 years, Foreman (Elect.) Supervisor, Rajendra Underground Mines, Navgaon Encline, Sohagpur area, District Shahdol, Madhya Pradesh

---- Respondent

For Appellants	: Shri Sudhir Kumar Bajpai, Advocate
For Respondent	: None

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice**Hon'ble Shri Parth Prateem Sahu, Judge****Judgment on Board****P. R. Ramachandra Menon, Chief Justice****20.08.2020**

1. I.A. No.01 of 2020 has been filed to condone the delay of 151 days in filing the appeal.
2. It is relevant to note that after passing the order under challenge, the matter was sought to be pursued by filing this appeal only after expiry of

151 days from the last date of filing the appeal and hence, the said delay is sought to be condoned by filing an IA. Even in the said application, no proper explanation has been given for the delay of more than five months, but for stating in 'paragraph-7' that it was unintentional and bonafide and on account of the fact that the Appellant Company is a Public Sector Undertaking and that they could not do so, due to some official mechanism and formalities. The said paragraph reads as follows :

“7. Thus, it is most humbly and respectfully prayed that the delay of about 151 days caused in filing the instant appeal was unintentional and bona-fide and on account of that the appellants are public sector undertaking company and due to official mechanism and formalities they could not file the appeal within the limitation, therefore the instant appeal deserves to be condoned, in the interest of justice.”

3. The version as given in paragraph-7 extracted above does not offer any reason; much less anything satisfactory, to have the delay condoned.
4. Coming to the appeal, it is at the instance of Respondents No.1 to 4 in Writ Petition (S) No.10692 of 2019. Grievance is against the order dated 17.12.2019 whereby the departmental enquiry ordered against the Respondent/Writ Petitioner has been ordered to be kept in abeyance till the next date of hearing.
5. The Writ Petitioner who entered the service of the Appellants as General Mazdoor in the 1981 was subsequently promoted to the post of Electrician, on the basis of a certificate produced by him. Later, when the said certificate was doubted in the year 1999, the Writ Petitioner produced all the relevant documents, which were stated as verified. Later, he was

given further promotion on 24.07.2003, presumably after evaluating the facts and verification as to the authenticity of the documents. It is stated that four promotions have been given to the Writ Petitioner who is presently working as Foreman (Elect.)/Supervisor and is about to retire on attaining the age of superannuation within a few months. It was while so, that the Writ Petitioner was served with Annexure P/1 dated 14.09.2019 initiating disciplinary proceedings against him, on the ground that the certificate produced earlier was a forged one. This made the Writ Petitioner to file Writ Petition (S) No.10692 of 2019 with the following prayers :

“10.1 That this Hon'ble court may kindly be pleased to quash Annexure P-1 dated 14.09.2018 in the interest of justice.

10.2 That this Hon'ble Court may kindly be pleased to quash the entire departmental enquiry proceedings initiated in the light of Annexure P-2.

10.3 That this Hon'ble Court may kindly be pleased to direct the respondents to pay all necessary dues of the petitioner with all consequential benefits.

10.4 Cost of the petition be awarded.

10.5 Any other relief which deemed fit by the Hon'ble Court may be granted.”

6. When the matter came up for consideration before the learned Single Judge on 17.12.2019, both the sides were heard. It was noted by the learned Single Judge that the insinuation was levelled against after several decades and after giving several promotions, based on verification of the documents produced from the part of the Writ Petitioner. The learned Judge also perused the documents including the earlier letter doubting the authenticity of the 'Electrician-certificate' issued in the year

1999 and the subsequent promotions given to him. It was accordingly, that the Respondents (Appellants herein) were directed to file a reply and the case was ordered to be listed after six weeks; simultaneously, directing the Respondents not to proceed with the departmental enquiry "till the next date of hearing", correctness of which is put to challenge in this appeal.

7. Shri Sudhir Kumar Bajpai, the learned counsel for the Appellants submits that much prejudice has been caused to the Appellants because of the order passed by the learned Single Judge and that the case put up by the Writ Petitioner is contrary to the facts, figures and the relevant provisions of law. In response to a specific query raised by this Court as to the maintainability of the appeal, it being against an "interim order" passed by the learned Single Judge, the matter was heard elaborately on this aspect.
8. Appeal is a statutory remedy and it is preferred under Section 2(1) of the Chhattisgarh High Court (Appeal to Division Bench) Act, 2006 (hereinafter referred to as 'the Act of 2006') which is extracted below :

"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 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."

9. Thus, proviso to Section 2(1) of the Act of 2006 clearly says that no appeal shall lie against an interim order. Admittedly, the order under challenge is

only an interim order, granting stay of disciplinary proceedings “till the next date of hearing”. It is quite open for the Appellants (who are the Respondents in the writ petition) to file their reply and press for urgent hearing or to file an IA seeking to vacate the stay, based on the pleadings set-forth in the reply. Absolutely, nothing has been stated in the writ appeal as to why the matter is not being pursued by the Appellants before the learned Single Judge, after filing of the reply on the merits involved.

10. The scope and ambit of intra court appeal, particularly against an interlocutory order had come to be considered before a Full Bench of this Court in **Ajay Gupta v. State of Chhattisgarh and Others**, reported in **AIR 2017 Chh 45**. The Full Bench in **Ajay Gupta** (supra) while dealing with the maintainability of writ appeal against the interlocutory order, held as under :

“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 cannot be termed to be interlocutory orders and in such eventuality, an appeal would lie against such orders.”

11. Thus, the proviso to Section 2(1) of the Act of 2006 bars writ appeal against an interlocutory order. The Full Bench has held that appeals

against those interim orders which are totally interlocutory in nature, which do not decide matters with an element of finality attached to them, would not lie under Section 2 (1) of the Act of 2006. The Full Bench has further held that, if the order vitally affects the right of the parties having bearing on a final adjudication of the case and which has an element of finality attached to them, even though the order is interlocutory, writ appeal would be maintainable against that order under Section 2(1) of the Act of 2006.

12. In the instant case, the order under challenge is only to the effect that, it has granted interim stay of disciplinary proceedings “till the next date of hearing”. As such, it does not declare or decide the *lis* between the parties giving any finality. In the said circumstance, we are of the firm view that the appeal is not maintainable, by virtue of statutory bar. It is open for the Appellants to pursue the matter before the learned Single Judge, pointing out the urgency, if any, to have an early hearing.
13. With the above observation, interference is declined. Both the petition to condone delay (I.A. No.01 of 2020) as well as the writ appeal itself, stand dismissed as not maintainable/liable to be entertained.

Sd/-

(P.R. Ramachandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge