

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR****Writ Appeal No. 400 of 2019**

*(Arising out of order dated 16.05.2019 passed in WPS No.3855 of 2019 by the learned Single Judge)*

Bauri S/o - Late Vishnu Aged About 61 Years R/o - Ward No. 26, Korea Line, Quarter 229, Bartunga, District Korea Chhattisgarh

**---- Appellant**

**Versus**

1. South Eastern Coalfield Limited, Through Its Chairman Cum Managing Director, Seepat Road Bilaspur, District Bilaspur Chhattisgarh
2. General Manager, South Eastern Coalfield Limited, Malviya Nagar, West Chirimiri Colliery, Chirimiri, District Korea Chhattisgarh
3. Sub/deputy Area Manager, South Eastern Coalfield Limited, Bartunga Colliery Chirimiri, District Korea Chhattisgarh
4. Deputy Chief Personal Manager, South Eastern Coalfield Limited, Bartunga Colliery, Chirimiri, District Korea Chhattisgarh

**---- Respondents**

---

|                 |                                 |
|-----------------|---------------------------------|
| For Appellant   | : Shri Waquar Naiyar, Advocate  |
| For Respondents | : Shri Vinod Deshmukh, Advocate |

---

**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**

**13.01.2020**

1. The appeal is against the interim order dated 16.05.2019 passed by the learned Single Judge in Writ Petition (S) No.3855 of 2019.
2. Heard Shri Waquar Naiyer, the learned counsel appearing for the Appellant and Shri Vinod Deshmukh, the learned counsel representing the Respondents.

3. The grievance of the Appellant is mainly with regard to the rejection of the interim prayer for staying the impugned order of dismissal pursuant to disciplinary proceedings, or in alternative, to grant interim pension to the Appellant.
4. The factual matrix of the case shows that the Appellant, while serving as a Category-I Majdoor was proceeded against, on the eve of his retirement and a charge-sheet was issued; which according to the Appellant was totally unfounded and not correct or sustainable. An enquiry was conducted and as per the report of enquiry, the charge was stated as proved, based on which, the punishment of dismissal was inflicted upon the Appellant. This made the Appellant to approach this Court by filing the writ petition, seeking to set aside the charge-sheet, the enquiry report and the order of dismissal.
5. Along with the writ petition, an I.A. No.01 of 2019 was filed, wherein the prayer sought for by the Appellant was in the following terms :

“It is, therefore, prayed that this Hon'ble Court may kindly be pleased to stay the effect and operation impugned order dated 28.09.2018, & or an alternative release the interim pension of the petitioner, till the final disposal of this writ petition, in the interest of justice.”

6. The learned counsel sought to place reliance on the verdicts passed by the Hon'ble Apex Court in the matter of **Jaswant Singh Gill v. Bharat Coking Coal Ltd. & Ors., (2007) 1 SCC 663** and also the Bench of the Calcutta High Court in the matter of **Durgadas Mukhopadhyay v. State of West**

**Bengal & Ors. decided on 08.11.2005 (MANU/WB/0627/2005)** to contend that the Appellant had attained the age of superannuation on 31.01.2018 and was superannuated accordingly. The Appellant was served with show cause notice much later, on 12.04.2018, whereas and the punishment of dismissal was imposed only on 28.09.2018, with retrospective effect from 31.01.2018.

7. The learned counsel submits that, by virtue of several rulings of Hon'ble Supreme Court and the High Courts including the observation given in paragraph-9 of the judgement in **Jaswant Singh Gill** (supra), no major punishment can be imposed on a person, after retirement from the service. We are aware of the judgements rendered by the Apex Court on the point in this regard, where the reasoning given is that, once a person retires from the service, the "master and employee relationship" stands cut-off and as such, no continuing power is vested with the master, to cut-off the service of a person, who, once upon a time, was serving the master. If disciplinary proceedings had been initiated prior to the date of retirement, it could be continued only to assess the loss, if at all any, sustained by the management and to have it recovered from the benefits payable to the employee. We do not intend to express anything in this regard as the primary question to be considered is whether the appeal is maintainable against rejection of the interim relief i.e. to stay the impugned order of dismissal or to grant interim pension.
8. Appeal is a statutory right and it can be availed only as per the relevant enabling provision. As far as this Court is concerned, it is Section 2(1) of

the Chhattisgarh High Court (Appeal to Division Bench) Act, 2006 (hereinafter referred to as 'the Act'), which reads as follows :

**“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.”

Thus, the proviso to Section 2(1) of the Act of 2006 expressly bars a writ appeal against an interim order. The scope and ambit of the above proviso had come up for consideration before the 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) dealt with the maintainability of writ appeal against interlocutory order and 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.”

9. Thus, the proviso to Section 2(1) of the Act of 2006 bars writ appeal against an interlocutory order. The Full Bench has also held that against those interim orders which are totally interlocutory in nature and do not decide matters and do not have an element of finality attached to them, no appeal would lie under Section 2 (1) of the Act of 2006. The Full Bench has further held that, if the order virtually affects the right of the parties having a 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.
10. As mentioned already, the interim relief sought for by the Appellant was only with regard to the stay of the impugned order of dismissal or to grant interim pension, which has been declined. It is quite open for the Appellant to substantiate the facts and figures before the learned Single Judge where the writ petition is still pending, with regard to the challenge raised against the dismissal order and the relief sought to be granted, contending that after the date of superannuation, there cannot be imposition of any

punishment. This being the position, the order passed by the learned Single Judge cannot be termed as a final order or having any effect of finality, so as to come within the purview of the law declared by the Full Bench of this Court as mentioned above.

11. As a natural consequence, by virtue of statutory bar under Section 2(1) proviso of the Act, we hold that appeal is not maintainable. Accordingly, the appeal stands dismissed.
12. Considering the persuasive submission made by the learned counsel for the Appellant, who is stated as working only as a Labourer, this Court expresses the hope and desire to have the writ petition heard and finalized as expeditiously as possible.

Sd/-

**(P.R. Ramachandra Menon)**  
**Chief Justice**

Sd/-

**(Parth Prateem Sahu)**  
**Judge**