

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No. 30 of 2020**

*{Arising out of order dated 28.11.2019 passed by the learned Single Judge in Writ
Petition (S) No. 7605 of 2018}*

- The Secretary, Chhattisgarh Lok Ayog, Gandhi Chowk, Raipur, Tahsil and District Raipur, Chhattisgarh.

---- Appellant**Versus**

1. Arun Kumar Sharma S/o Shri Phoolchand Sharma, Aged About 26 Years R/o Quarter No. 78, Sector - 2, Block - 8, Kanshiram Nagar, Raipur, Tahsil and District Raipur, Chhattisgarh.
2. State of Chhattisgarh Through The Secretary, General Administration Department, Mantralay, Mahanadi Bhawan, Atal Nagar, P. S. Rakhi, Tahsil and District Raipur, Chhattisgarh.
3. State of Chhattisgarh Through The Secretary, Finance Department, Mantralay, Mahanadi Bhawan, Atal Nagar, P.S. Rakhi, Tahsil and District Raipur, Chhattisgarh.

---- Respondents

For Appellant	:	Shri Sumesh Bajaj, Advocate.
For Respondent No.1	:	Shri Harshwardhan Parganiha, Advocate.
For Respondents/State	:	Shri Vikram Sharma, Deputy Government Advocate.

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice
Hon'ble Shri Justice Parth Prateem Sahu, Judge

Judgment on Board**Per P. R. Ramachandra Menon, Chief Justice****14.01.2020**

1. The appeal is against the interim order passed by the learned Single Judge on 28.11.2019, whereby one post in the Chhattisgarh Lok Aayog has been ordered to be kept vacant subject to the final outcome of the writ petition. In fact, the writ petition has been filed with the following prayers:

“10.1 A writ and/or an order in the nature of writ of appropriate nature do issue commanding & directing the respondent authorities to produce before this Hon'ble Court all the relevant records pertaining to the case of the petitioners for its kind perusal.

10.2 A writ and/or an order in the nature of writ of Certiorari/appropriate nature do issue quashing the order dated 31.10.2018 (Annexure P/1) being, illegal, discriminatory and arbitrary.

10.3 That, this Hon'ble Court may be kind enough in issuing a writ, order/direction in the nature of mandamus, certiorari or likewise any other appropriate writ, commanding and directing the respondent-State to reinstate the services of the petitioner.

10.4 Any other relief, which the Hon'ble Court deems fit and proper looking to the facts and circumstances of the case, may also be granted.”

2. The interim relief is sought for as given below:

“It is therefore prayed that this Hon'ble Court may be kind enough to stay the order dated 31.10.2018 (Annexure P/1) and till the final decision of the case the impugned order may kindly be kept in abeyance, till the final decision of the case.”

3. The learned Single Judge considering the nature of pleadings and prayers found it fit to cause one post to be kept vacant, till the decision in the writ petition and the matter was ordered to be listed for further consideration after four weeks. This is sought to be challenged by way of writ appeal.
4. At the outset, we doubt the maintainability of the appeal in view of the statutory provisions. The learned counsel for the Appellant addressed the Court as to the maintainability and we heard accordingly.
5. The right of appeal is a statutory right and that being the position, it can be pursued only in terms of the statute. Section 2(1) of the Chhattisgarh High Court (Appeal to Division Bench) Act, 2006 reads as follows:

“2. Appeal to 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.”

6. The above proviso clearly says that no appeal shall be maintainable against an interim order passed by a Judge of this Court under Article 226 of the Constitution of India. The scope of the said proviso had come up for scrutiny before a Full Bench of this Court and the legal position has made clear as per the verdict dated 25.01.2017 in Writ Appeal No. 255 of 2016 which is to the following effect:

“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.”

From the above, it is clear that appeal will lie against an interim order only if it is 'final'. Going by the order which is under challenge, it is quite evident that it does not say anything with regard to finality of the issue and the writ petition is still pending consideration.

7. The learned counsel for the Appellant submits that the Appellant had filed an I.A. requesting to vacate the interim order, which however, came to be rejected. In the said circumstances, the only other option for the Appellant may be to file appropriate proceeding or to make submissions before the learned Single

Judge as to the urgency in view of the exigency of service or such other circumstances, to have the matter heard and finalized with priority.

8. In the above circumstances, since the appeal is not maintainable in law, we decline interference and the appeal stands dismissed. We make it clear that, we have not mentioned anything with regard to the merits involved, which is to be considered by the learned Single Judge. We only express our hope and desire that the matter be heard and finalized as expeditiously as possible.

Sd/-

(P. R. Ramachandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge