

MAT 522 of 2021
With
CAN 1 of 2021
Mahendra Paikra
-Vs-
Coal India Ltd. & Ors.
(Via Video Conference)

Mr. Soumya Majumder
Mr. Victor Chatterjee

... for the Appellant

Mr. Raja Basu Chowdhury
Mr. Pradyut Kr. Das
Mr. Debabrata Das

... for the CIL

Party/Parties is/are represented in the order of
their name/names as printed above in the cause title

A limited challenge is thrown by the appellant in
this appeal. The challenge is to the refusal by the
Hon'ble Single Bench by its order dated 23rd
September, 2020 passed in the writ petition of the
present appellant to grant any interim protection in
service to the appellant.

Mr. Majumder, Learned Counsel appearing for
the appellant with Mr. Chatterjee, Learned Advocate,
draws the attention of this Court to the order
impugned dated 23rd September, 2020 and submits
that although the appellant was in dire need of an
interim protection in service, the Hon'ble Single Bench
refused to consider such issue and came to the

conclusion that the writ petition only requires to be decided through exchange of affidavits.

Elucidating dire circumstances connected to the present appellant, Mr. Majumdar submits that the appellant along with the others was appointed as a Management Trainee (Mining) under the Respondents/Coal India Limited (CIL).

The initial appointment was made in February, 2013. It is submitted that during such appointment the appellant along with the others, appointed in the same category, was discovered to be medically unsuitable for performing underground mining operations in view of his purported colour blindness.

On the basis of such medical opinion, CIL initially de-rostered the appellant but, thereafter reinstated him in service along with others on the 9th of April, 2015. Since 2015 for a period five years, the appellant along with others who were also declared to be colour blind, was permitted to work in the office of the CIL. Such work did not involve his participation in underground mining operations. The appellant, along with the others similarly situated, became subsequently aggrieved by the sudden order dated 3rd July, 2020 of the CIL terminating them from service.

Arriving before the Hon'ble Single Bench with the letter of termination passed on 3rd July, 2020 (*supra*) after the appellant had put in five years of service

upon reinstatement by the CIL, the appellant prayed for interim protection till the writ petition could be heard out and, on refusal of such interim protection, this appeal has occurred.

Mr. Majumder takes this Court to two orders dated 28th September, 2020 in MAT 595 of 2020 with its connected applications and the order dated 13th April, 2021 in FMA 99 of 2021 along with its connected applications, wherein the two Hon'ble Division Benches of this Court granted interim protection to the similarly situated appellants therein pending ultimate consideration of the matter by the appropriate Hon'ble Single Bench. The orders respectively dated 28th September, 2020 and 13th April, 2021 at their operative part read as follows:

“ Order dated 28.09.2020

We have not gone into the merits of the case. All issues are left open for the learned Single Judge to decide after exchange of affidavits. No observation made in this order shall have any bearing on the proceeding before the learned Single Judge. However, we add that if the learned Single Judge deems it appropriate, an order may be issued for getting the writ petitioners examined by an independent eye doctor, who will be acceptable to both the parties, since there

appears to be conflicting opinions of eye doctors on record as regards the alleged colour blindness of the writ petitioner.

Since we have not called for affidavit-in-opposition, the averments made in the stay application shall be deemed not to be admitted by the writ petitioner/respondent no.1.

The appeal and the connected applications are accordingly disposed of.”

“ Order dated 13th April, 2021

Employer in case of applicant as well as the other two persons, who had obtained interim order, is the same. The three persons appear to be similarly placed inasmuch as they suffer similar physical disability as has been contended by their employer. All of them had their services terminated on 3rd July, 2020. The two persons obtained interim order and are being allowed to work. Appeals preferred against the orders were dismissed and leave was not granted in the special leave petition filed in the Supreme Court. In this background both contentions of respondents, on facts and in law, cannot be accepted at this stage. We must presume that

the contentions on fact of confirmation not granted and in law regarding reinstatement not being allowed as interim relief, were pleaded and argued at the appellate stage in similar matters and special leave petition arising therefrom, dismissed. In a situation where applicant relies on similarly placed persons having had got relief, we also are not inclined to deny the relief to him because some others did not get it. There shall be interim order in line with said orders dated 6th August, 2020 and 14th August, 2020 by directing, the termination order be kept in abeyance till disposal of the writ petition or until further orders.”

Mr. Majumder, on the strength of the above two orders of the two Hon’ble Division Benches on identical issues, prays for parity of interim protection.

Mr. Basu Chowdhury, Learned Counsel for the Respondents/CIL, submits that the appellant has waited too long to bring the issue of interim protection before this Court. Mr. Basu Chowdhury therefore submits that the appellant be treated as a fence-sitter.

Mr. Basu Chowdhury further submits that the matter requires to be heard out on merits failing which a series of identical interim protection would result in

opening of the floodgates for similar litigation.

Having heard the parties and considering the materials placed, this Court must acknowledge the complete identity of the facts and circumstances surrounding the employees who were equally situated as the appellant and received the interim protection of keeping their respective orders of termination in abeyance. This Court is in complete agreement with the interim findings of the Hon'ble Division Bench *vide* their respective orders dated 28th September, 2020 and 13th April, 2021 (*supra*).

This Court accordingly directs that the petitioner shall be entitled to interim protection on the same terms as granted by the orders dated 28th September, 2020 and 13th April, 2021. The order of termination dated 3rd April, 2020 *qua* the present appellant shall be kept in abeyance till the writ petition is finally heard out.

Before parting with this discussion, it would be pertinent to deal with the point of delay in filing the appeal raised by Mr. Basu Chowdhury. The fact cannot escape the notice of this Court that the order impugned dated 23rd September, 2020 was passed during the rising pandemic which is yet to subside. The orders of the Hon'ble Division Benches relied upon by the present appellant have also been issued contemporaneously and, this appeal has been filed

within reasonable time of the opening of Court functioning in June, 2021.

In the backdrop of the above directions, the writ petition returns to be heard out by the Hon'ble Single Bench on merits expeditiously, subject to its convenience. No other issues require to be determined in this appeal and the Hon'ble Single Bench would now hear the writ petition on affidavits.

MAT 522 of 2021 with **CAN 1 of 2021** stand thus **disposed of**.

Since affidavits are not invited to the application, other allegations are deemed to be denied and disputed.

All parties to act on a server copy of this order duly obtained from the official website of the Hon'ble High Court, Calcutta.

Urgent Xerox certified copy of this order, if applied for, be supplied to the parties, subject to compliance with all requisite formalities

(Saugata Bhattacharyya,J.) (Subrata Talukdar,J.)

