

**13.04.2021**  
Item No. 29  
Ct. No. 04  
PG

**F.M.A. 99 of 2021**  
**With**  
**IA no. CAN 1 of 2020**  
**IA no. CAN 2 of 2020**  
**IA no. CAN 3 of 2020**  
**Asit Kumar Naskar**  
**Vs.**  
**Coal India Ltd. & Ors.**

Mr. Monish Sen  
Mr. Abhijit Boral  
Ms. Oaisani Mukherjee....for applicant/  
appellant

Mr. Raja Basu Chowdhury  
Mr. Pradyot Kr. Das.....for respondents/  
Coal India Ltd.

The application carries prayer, inter alia, for direction for applicant being allowed to resume his duty in last capacity pending hearing of the writ petition, with all benefits. Mr. Sen, learned advocate appears on behalf of applicant and submits, by impugned order dated 7<sup>th</sup> August, 2020, directions for affidavits were given, thereby refusing interim order. Hence, the appeal and application. Mr. Basu Chowdhury, learned advocate appears on behalf of respondents and opposes the application.

Parties consent to have both the application and appeal heard and disposed of at this stage upon dispensation of all formalities.

Mr. Sen, submits, his client is one of three employees of Coal India Limited, all of whom suffered

physical disability and colour blindness. All of them were removed from service and had moved the writ Court separately. The two others got interim relief, while his client did not. The orders of interim relief were appealed against by respondents. The orders were confirmed in appeal. Respondents filed Special Leave to Appeal petitions before the Supreme Court. Said Court by **order dated 8<sup>th</sup> February, 2021** dismissed **Petition(s) for Special Leave to Appeal (C) No(s). 825/2021 (Coal India Ltd. vs. Anil Das & Ors.)**.

He draws attention to order dated 6<sup>th</sup> August, 2020 of a learned single Judge of this Court, wherein, inter alia, following were said:

*“This writ challenges the decision dated 3<sup>rd</sup> July, 2020 made by the Chairman and Managing Director of Coal India Limited declaring the writ petitioner as “colour blind” and “not fit for the job for which he is appointed”. By this order, the writ petitioner’s service was terminated.*

*...*

*Since 15th April, 2015 or thereabouts the petitioner is working in the System Department.*

*Pending hearing of the writ it would not be proper to remove him from the department where he has been working for five years.”*

He also relies on order dated 14th August, 2020 passed by another learned single Judge of this Court, wherein following were said.

*“This writ petition has been filed challenging an order dated July 3, 2020 issued by the respondent-authority who has appointed the petitioner in the post of Management Trainee (Quality Control).*

*...*

*In such circumstances, the order impugned shall be kept in abeyance till disposal of the writ petition or until further orders.*

*Accordingly, I direct that he petitioner shall be allowed by the concerned respondent-authorities to continue his work in the post where he was last appointed in terms of the order dated May 26, 2015 (Annexure P12, page 56 of the writ petition). The order of so-called termination being Annexure P18 at page 75 shall remain stayed during pendency of the writ petition.”*

He submits, these were the orders that were taken to the Division Bench and confirmed. He reiterates, Special Leave Petitions against one of the orders of Division Bench, was dismissed. There should be parity and thereby interference with impugned order giving only directions and, by implication, rejecting his client’s prayer for interim order.

Mr. Basu Chowdhury, with reference to the following in said order dated 6<sup>th</sup> August, 2020 submits, assistance on correct facts was not rendered to the learned Judge.

*“Now, in this writ the said impugned decision dated 3<sup>rd</sup> July, 2020 is challenged on various grounds-e.g. the finding of colour blindness on the ground that such medical finding did not support termination of the petitioner from service, the petitioner was confirmed in service after proper medical test and so on.”*

On law Mr. Basu Chowdhury relies on two judgments of Supreme Court; (i) **Delhi Cloth and General Mills Co. Ltd. vs. Shri Rameshwar Dyal** reported in **AIR 1961 SC 689**, paragraph 8, from which we extract following passage:

*“The interim relief ordered in this case was that the workman should be permitted to work: in other words he was ordered to be reinstated; in the alternative it was ordered that if the management did not take him back they should pay him his full wages. We are of opinion that such an order cannot be passed in law as an interim relief, for that would amount to giving the respondent at the outset the relief to which he would be entitled only if the employer failed in the proceedings under Section 33-A.....”*

(ii) **Public Services Tribunal Bar Association vs. State of U.P.**, reported in **(2003) 4 SC 104**, paragraph 39, also from which we extract following passage:

*“.....Interference at the interim stage with an order of dismissal, removal, termination and compulsory retirement would be giving the final relief to an employee at an interim stage which he would have got in case*

*the order of dismissal, removal, termination and compulsory retirement is found not to be justified. If the order of dismissal, removal, termination and compulsory retirement is set aside then an employee can be compensated by moulding the relief appropriately in terms of arrears of salary, promotions which may have become due or otherwise compensating him in some other way. But in case the order of dismissal, removal, termination and compulsory retirement is found to be justified then holding of the office during the operation of the interim order would amount to usurpation of an office which the employee was not entitled to hold. The action becomes irreversible as the salary paid to the employee cannot be taken away as he has worked during that period and the orders passed by him during the period.....”*

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 3<sup>rd</sup> 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 6<sup>th</sup> August, 2020 and 14<sup>th</sup> August, 2020 by directing, the termination order be kept in abeyance till disposal of the writ petition or until further orders.

The applications and appeal are disposed of.

**(Arindam Sinha, J.)**

**(Suvra Ghosh, J.)**