

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No. 23 of 2021**

{Arising out of order dated 07.12.2020 passed by the learned Single Judge in Writ Petition (S) No. 4718 of 2020}

- Smt. Mamta Rastogi, age 43 years, W/o Shri Neeraj Rastogi, R/o Geeta Niwas, C/o Lalit Kumar Agrawal, Ashwini Nagar, Near Maharastrayan Teli Samaj Bhawan, Sudhir Mukherjee Ward, Raipur, District Raipur (C.G.)

---- Appellant**Versus**

1. State of Chhattisgarh through the Secretary Department of Law and Legislative Affairs, Mahandi Bhawan, Capital Complex, Atal Nagar, Raipur, District Raipur (C.G.)
2. District and Session Judge, Raipur, District Raipur (C.G.)
3. Enquiry Officer, Smt. Leena Agrawal, C/o District and Session Judge, Raipur, District Raipur (C.G.)

---- Respondents

For Appellant	:	Shri Sudeep Johri, Advocate.
For Respondent/State	:	Shri Chandresh Shrivastava, Deputy Advocate General.

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****25.01.2021**

1. The appeal is against the order dated 07.12.2020 passed by the learned Single Judge, whereby the prayer to grant interim stay of the disciplinary proceedings has been rejected.

2. The learned counsel was required to address the Court with regard to the maintainability of the appeal, particularly, the mandate of the proviso to Section 2(1) of the Chhattisgarh High Court (Appeal to Division Bench) Act, 2006. The learned counsel submits that insofar as the prayer for interim relief has been denied, as far as the Appellant is concerned, it is the final order. We find it difficult to agree.

3. The provision read 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.”

4. The proviso is quite categoric to the effect that no appeal is maintainable against an interim order or a verdict passed in exercise of supervisory jurisdiction. The scope of the said proviso was considered by a Full Bench of this Court, and as per the judgment reported in Writ Appeal No. 255 of 2016, it has been categorically held that unless the order is having finality with regard to the 'lis', no appeal is maintainable. The last paragraph of the verdict passed by the Full Court 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."

5. In view of the above circumstance, since the challenge raised is only with regard to the denial of the interim order sought for, we are of the view that this squarely comes within the proviso and no appeal is maintainable.
6. The writ appeal is dismissed accordingly, without prejudice to the rights of the Appellant to pursue the matter before the learned Single Judge.

Sd/-

(P. R. Ramachandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge