

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No. 81 of 2021**

{Arising out of order dated 29.01.2021 passed by the learned Single Judge in Writ Petition (S) Nos. 4548 of 2019 and 3210 of 2020}

- Arun Kumar Sharma, S/o Late Ram Khelawan Sharma, aged about 51 years, Senior Clerk Gr.B, presently posted at Saripali Open Cast Project, Korba Area, SECL, R/o M-14, Ompur Colony, Rajgamar, District Korba (C.G.)

---- Appellant**Versus**

1. South Eastern Coalfields Limited, through Chief Managing Director (CMD) Seepat, Road, Bilaspur (C.G.)
2. Chief Managing Director (CMD) South Eastern Coalfields Limited Seepat, Road, Bilaspur (C.G.)
3. Director (Personnel & Industrial Relations) South Eastern Coalfields Limited Seepat Road, Bilaspur (C.G.)
4. Colliery Manager, Rajgamar Colliery, Korba, District Korba (C.G.).
5. Sub Area Manager Saraipali Open Cast Project, SECL, Pali, District Korba (C.G.)
6. Chief General Manager / General Manager Korba Area SECL, District Korba (C.G.)

---- Respondents

For Appellant	:	Shri Bidya Nand Mishra, Advocate.
For Respondents	:	Shri Vinod Deshmukh, Advocate.

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice**Hon'ble Shri Narendra Kumar Vyas, Judge****Judgment on Board****Per P. R. Ramachandra Menon, Chief Justice****25.03.2021**

1. The appeal is against the interim order dated 29.01.2021, whereby I.A. No. 1 of 2020 seeking for stay stands turned down.
2. The writ Petitioner moved the Court by filing the writ petition with the following prayers:

“10.1 That this Hon'ble Court may kindly be pleased to call for the entire records of the respondents by which the date of birth & date of retirement / age of superannuation was decided in respect of 17 employees of Rajgamar Colliery vide Letter No. 1365 dated 14 / 15-7-2000 of Dy. Chief Personnel Manager (Admn.), Korba Area SECL in terms with decision of the Functional Directors of the Company.

10.2 That, this Hon'ble Court may kindly be pleased to pass suitable Orders / Orders to the respondents to make necessary corrections in date of birth as 26.03.1969 in all the service records maintained with relation to the employment of the petitioner on the basis of Matriculation (Xth Board Exam.) Certificate submitted to the respondents by the petitioner at the relevant time.

10.3 That this Hon'ble Court may kindly be pleased to pass suitable Orders to the respondents to make required correction in the date of birth of the petitioner alternately, on the parameters considered in case of other employees of Rajgamar Colliery vide letter no. 1365 dated 14 / 15.07.2000 of Dy. Chief personnel Manager (Admn.) Korba Area, SECL mentioned above, following the decision taken by the Functional Directors of the respondent Company.

10.4 That this Hon'ble Court may kindly be pleased to pass any relief / order of direction as deem fit in the interest of justice.”

3. Simultaneously, I.A. No. 1 of 2020 was also filed seeking for interim relief to the following effect:

“It is therefore prayed that this Hon'ble Court may kindly be pleased to allow the application and stay the effect and operation of impugned notice of retirement dated 04.07.2020 (Annexure P/1) till the disposal of the writ petition, in the interest of justice.”

4. The matter was considered elaborately by the learned Single Judge, when it was found that it was not a fit case (where the dispute with regard to the actual date of birth and the right to continue in service) to be acted upon by granting interim relief. It was accordingly that the I.A. came to be turned down, which is put to challenge in the appeal preferred by the writ Petitioner / Appellant.
5. When the matter is taken up for the consideration, we repeatedly asked the learned counsel as to how the appeal is maintainable against the interim order

passed in I.A. No. 1 of 2020, when there is a clearly bar under proviso to Section 2(1) of the Chhattisgarh High Court (Appeal to Division Bench) Act, 2006 (hereinafter referred to as 'Act of 2006'). No satisfactory answer is forthcoming.

6. The relevant provision, whereby the remedy of appeal is provided *i.e.* Section 2(1) of the Act of 2006 is extracted below for convenience of reference:

“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.”

Proviso to Section 2(1) of the Act of 2006 clearly says that no appeal is maintainable against any interim order. It is applicable with equal force whether interim stay is granted or denied.

7. We are aware that the scope of the above proviso was the subject matter of consideration before a Full Bench of this Court. After threadbare analysis of the relevant provisions, a categorical finding was rendered as per the judgment dated 25.01.2017 passed by the Full Bench in Writ Appeal No. 255 of 2016. The operative portion of which, as contained in the last paragraph, 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 the interlocutory orders and in such eventuality, an appeal would lie against such orders.”

From the above, it is quite evident that appeal will be maintainable only if the interim order is having final effect with regard to the very '*lis*' involved.

8. Applying the said position to the given case, the dispute with regard to the actual date of birth and right to continue in service is still a matter which is pending consideration before the learned Single Judge. In the said circumstance, the present appeal is not maintainable by virtue of the law as mentioned above. Interference declined. Appeal stands dismissed without prejudice to the rights and liberties to the Appellant to pursue the matter before the learned Single Judge.
9. Considering the submission made by the learned counsel that expeditious disposal of the writ petition may be ordered; it is left open for the writ Petitioner / Appellant to make appropriate submission before the learned Single Judge in this regard.

Sd/-

(P. R. Ramachandra Menon)
Chief Justice

Sd/-

(Narendra Kumar Vyas)
Judge