

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPL No. 35 of 2012

1. President Parent Teacher Association, BSP Higher Secondary School No.1, Sector 6, Bhilai, Distt.-Durg (CG)
2. Secretary cum Principal Parent Teachers Association BSP Higher Secondary School No.1, Sector 6, Bhilai, Distt.-Durg (CG)
3. Managing Director SAIL, BSP Bhilai (now Chief Executive Officer) Distt. Durg (CG)

---- Petitioners

Versus

1. State Of Chhattisgarh, through Secretary, Labour Department, Government of Chhattisgarh, Raipur.
2. Presiding Officer, Labour Court, Durg
3. Nona Bai W/o Budhram R/o Sanjay Nagar Kumharpara Supela Bhilai Distt. Durg (CG)

---- Respondents

And

WPL No. 40 Of 2012

1. President Parent Teacher Association, BSP Higher Secondary School Camp 1, Bhilai, Distt.-Durg (CG)
2. Secretary cum Principal Parent Teachers Association BSP Higher Secondary School Camp 1, Bhilai, Distt.-Durg (CG)
3. Managing Director SAIL, BSP Bhilai (now Chief Executive Officer) Distt. Durg (CG)

---- Petitioner

Vs

1. State Of Chhattisgarh, through Secretary, Labour Department, Government of Chhattisgarh, Raipur.

2. Presiding Officer, Labour Court, Durg
3. Kartik Ram S/o Ganpat Lal R/o Nehru Chowk Camp 1 Near Sinha Cycle Store Bhilai Distt. Durg (CG)

---- Respondents

And

WPL No. 41 Of 2012

1. President Parent Teacher Association, BSP Higher Secondary School No.1, Sector 6, Bhilai, Distt.-Durg (CG)
2. Secretary cum Principal Parent Teachers Association BSP Higher Secondary School No.1, Sector 6, Bhilai, Distt.-Durg (CG)
3. Managing Director SAIL, BSP Bhilai (now Chief Executive Officer) Distt. Durg (CG)

---- Petitioners

Vs

1. State Of Chhattisgarh, through Secretary, Labour Department, Government of Chhattisgarh, Raipur.
2. Presiding Officer, Labour Court, Durg
3. Budharam S/o Late Chhotu Ram R/o Sanjay Nagar Kumharpara Supela Bhilai Distt. Durg (CG)

---- Respondents

And

WPL No. 42 Of 2012

1. President Parent Teacher Association, BSP Middle School No.24, Sector 7, Bhilai, Distt.-Durg (CG)
2. Secretary cum Headmaster Parent Teachers Association BSP Middle School No.24, Sector 7, Bhilai, Distt.-Durg (CG)
3. Managing Director SAIL, BSP Bhilai (now Chief Executive Officer) Distt. Durg (CG)

---- Petitioner

Vs

1. State Of Chhattisgarh, through Secretary, Labour Department, Government of Chhattisgarh, Raipur.
2. Presiding Officer, Labour Court, Durg
3. N. Kondaiya S/o N. Polaiyya, R/o Block No. 2/F, Cross Street No. 11 Sector 6 Bhilai, Distt. Durg (C.G.)

---- Respondents

And

WPL No. 197 Of 2012

1. Pankaj Gautam, Ex. Chief Executive Officer, SAIL, Bhilai Steel Plant, Bhilai Dist. Durg (Chhattisgarh)
2. D.P. Satpathy, Dy. General Manager, Education, Education Department, SAIL Bhilai Steel Plant, Bhilai, Dist. Durg (Chhattisgarh)
3. G.S. Dehre, Principal, BSP Middle School Sector-7, Bhilai Dist. Durg (CG)

---- Petitioners

Vs

1. State Of Chhattisgarh Through Secretary, Labour Department, Govt. Of Chhattisgarh, Raipur (CG)
2. Deputy Labour Commissioner (State) Nirmal Chhaya Bhawan, Miradatar Road, Shankar Nagar, Raipur (CG)
3. N. Kondaiya S/o N. Polaiyya, resident of Block No. 2/F, Cross Street No. 11, Sector-6, Bhilai, Tah. & Dist. Durg (CG)

---- Respondents

And

WPL No. 198 Of 2012

1. Pankaj Gautam, Ex. Chief Executive Officer, SAIL, Bhilai Steel Plant, Bhilai Dist. Durg (Chhattisgarh)
2. D.P. Satpathy, Dy. General Manager, Education, Education Department, SAIL Bhilai Steel Plant, Bhilai, Dist. Durg (Chhattisgarh)

3. Smt. Chitra Kurre Principal, BSP High School No. 1, Sector-6, Bhilai Dist. Durg (C.G.)

---- Petitioners

Vs

1. State Of Chhattisgarh Through Secretary, Labour Department, Govt. Of Chhattisgarh, Raipur (CG)
2. Deputy Labour Commissioner (State) Nirmal Chhaya Bhawan, Miradatar Road, Shankar Nagar, Raipur (CG)
3. Budhram S/o Late Choturam, resident of Sanjay Nagar Kumhar Para, Supela, Bhilai, Tah. & Dist. Durg (C.G.)

---- Respondents

And

WPL No. 46 Of 2012

1. President Parent Teacher Association, BSP Senior Secondary School No.2, Sector 6, Bhilai, Distt. Durg (CG)
2. Secretary cum Principal Parent Teachers Association, BSP Senior Secondary School No.2, Sector 6, Bhilai, Distt. Durg (CG)
3. Managing Director, SAIL, BSP, Bhilai (now Chief Executive Officer) Distt. Durg (CG)

---- Petitioners

Vs

1. State Of Chhattisgarh, through Secretary, Labour Department, Government of Chhattisgarh, Raipur.
2. Presiding Officer, Labour Court, Durg
3. Kavita Chourey W/o Rahul Chourey, R/o Buddha Vihar, Sector-6, Street No.-1, Bhilai Distt. Durg (CG)

---- Respondents

And

WPL No. 47 Of 2012

1. President Parent Teacher Association, BSP Senior Secondary School, Sector 4, Bhilai, Distt. Durg (CG)
2. Secretary cum Principal Parent Teachers Association, BSP Senior Secondary School, Sector 4, Bhilai, Distt. Durg (CG)
3. Managing Director, SAIL, BSP, Bhilai (now Chief Executive Officer) Distt. Durg (CG)

---- Petitioners

Vs

1. State Of Chhattisgarh, through Secretary, Labour Department, Government of Chhattisgarh, Raipur.
2. Presiding Officer, Labour Court, Durg
3. Ram Ajjaiyya, S/o Shri Chinaiyya, R/o Block No. 1/A, Street No.60, Sector-6, Bhilai Distt. Durg (CG)

---- Respondents

And

WPL No. 48 Of 2012

1. President Parent Teacher Association, BSP Senior Secondary School, Sector-10, Bhilai, Distt. Durg (CG)
2. Secretary cum Principal Parent Teachers Association, BSP Senior Secondary School, Sector-10, Bhilai, Distt. Durg (CG)
3. Steel Authority Of India Ltd. Through Managing Director Now Known As Chief Executive Officer, Bhilai Steel Plant, Tahsil and Distt. Durg (CG)

---- Petitioners

Vs

1. State Of Chhattisgarh, through Secretary, Labour Department, Government of Chhattisgarh, Raipur.
2. Presiding Officer, Labour Court, Durg
3. B. Polamma, W/o B. Ramallu, R/o Block No.1C, 1-F, Labour Camp Bhilai, Tahsil and Distt. Durg (CG)

---- Respondents

And

WPL No. 49 Of 2012

1. President Parent Teacher Association, BSP English Medium Middle School, Sector 7, Bhilai, Distt. Durg (CG)
2. Secretary cum Headmaster Parent Teachers Association, BSP English Medium Middle School, Sector-7, Bhilai, Distt. Durg (CG)
3. Managing Director, SAIL, BSP, Bhilai (now Chief Executive Officer) Distt. Durg (CG)

---- Petitioners

Vs

1. State Of Chhattisgarh, through Secretary, Labour Department, Government of Chhattisgarh, Raipur.
2. Presiding Officer, Labour Court, Durg
3. P. Chintami, W/o Akaiya, R/o Block No. 3 F, Street No. 59, Sector-6, Bhilai Distt. Durg (CG)

---- Respondents

And

WPL No. 50 Of 2012

1. President Parent Teacher Association, BSP High School, Sector-8, Bhilai, Distt. Durg (CG)
2. Secretary cum Principal Parent Teachers Association, BSP High School, Sector-8, Bhilai, Distt. Durg (CG)
3. Managing Director, SAIL, BSP, Bhilai (now Chief Executive Officer) Distt. Durg (CG)

---- Petitioners

Vs

1. State Of Chhattisgarh, through Secretary, Labour Department, Government of Chhattisgarh, Raipur.

2. Presiding Officer, Labour Court, Durg
3. Ahilya Bai, W/o Teluchand, R/o Block No. L C-1-F, Labour Camp Bhilai Distt. Durg (CG)

---- Respondents

And

WPL No. 163 Of 2012

1. Pankaj Gautam, Ex. Chief Executive Officer, SAIL, Bhilai Steel Plant, Bhilai Dist. Durg (Chhattisgarh)
2. D.P. Satpathy, Dy. General Manager, Education, Education Department, SAIL Bhilai Steel Plant, Bhilai, Dist. Durg (Chhattisgarh)
3. Dr. S.V. Kulkarni, Principal, BSP Higher Secondary School, Camp-I, Bhilai, Distt Durg, (CG)

---- Petitioners

Vs

1. State Of Chhattisgarh Through Secretary, Labour Department, Govt. Of Chhattisgarh, Raipur, (CG)
2. Deputy Labour Commissioner (State), Nirmal Chhaya Bhawan, Miradatar Road, Shankar Nagar, Raipur, (CG)
3. Shri S.L. Jangde, Dy. Labour Commissioner (State), Nirmal Chhaya Bhawan, Miradatar Road, Shankar Nagar, Raipur, (CG)
4. Kartik Ram, S/o Ganpatlal, resident of Near Sinha Cycle Stores, Nehru Chowk, Camp I, Tah & Dist Durg, (CG)

---- Respondents

And

WPL No. 41 Of 2013

1. Pankaj Gautam, Ex. Chief Executive Officer, SAIL, Bhilai Steel Plant, Bhilai Dist. Durg (Chhattisgarh)
2. D.P. Satpathy, Dy. General Manager, Education, Education Department, SAIL Bhilai Steel Plant, Bhilai, Dist. Durg (Chhattisgarh)
3. Smt. E. Ekka, Principal, BSP Emms-7 School, Bhilai, Distt Durg, (CG)

---- **Petitioners**

Vs

1. State Of Chhattisgarh, Through Secretary, Labour Department, Govt. Of Chhattisgarh, Raipur, (CG)
2. Deputy Labour Commissioner (State), Nirmal Chhaya Bhawan, Miradatar Road, Shankar Nagar Raipur, (CG)
3. P. Chintami, W/o Akaiya R/o Block No.3-F, Street No.59, Sector 6, Bhilai, Tahsil and Distt Durg, (CG)

---- **Respondents**

And

WPL No. 44 Of 2013

1. Pankaj Gautam, Ex. Chief Executive Officer, SAIL, Bhilai Steel Plant, Bhilai Dist. Durg (Chhattisgarh)
2. D.P. Satpathy, Dy. General Manager, Education, Education Department, SAIL Bhilai Steel Plant, Bhilai, Dist. Durg (Chhattisgarh)
3. P.N. Tripathi, Ex. Principal, BSP Sr. Secondary School No.2, Sector-06, Bhilai Distt. Durg C.G.

---- **Petitioners**

Vs

1. State Of Chhattisgarh Through Secretary Labour Department Govt. Of Chhattisgarh, Raipur (CG)
2. Deputy Labour Commissioner (State), Nirmal Chhaya Bhawan, Miradatar Road, Shankar Nagar Raipur, (CG)
3. Kavita Chourey, W/o Rahul Choure, R/o Buddha Vihar, Street No.1, Sector-6, Bhilai, Tahsil & Distt. Durg (CG)

---- **Respondents**

And

WPL No. 42 Of 2013

1. Pankaj Gautam, Ex. Chief Executive Officer, SAIL, Bhilai Steel Plant, Bhilai Dist. Durg (Chhattisgarh)

2. D.P. Satpathy, Dy. General Manager, Education, Education Department, SAIL Bhilai Steel Plant, Bhilai, Dist. Durg (Chhattisgarh)
3. R.C. Mahajan, Principal, BSP High School, Sector – 8, Bhilai Distt. Durg (CG)

---- Petitioners

Vs

1. State Of Chhattisgarh, Through Secretary, Labour Department, Govt. Of Chhattisgarh, Raipur (CG)
2. Deputy Labour Commissioner (State), Nirmal Chhaya Bhawan, Miradatar Road, Shankar Nagar Raipur, (CG)
3. Ahila Bai, W/o Teluchand, R/o Block No. L C-1-F, Labour Camp-1 Bhilai, Tahsil & Distt. Durg (CG)

---- Respondents

And

WPL No. 43 Of 2013

1. Pankaj Gautam, Ex. Chief Executive Officer, SAIL, Bhilai Steel Plant, Bhilai Dist. Durg (Chhattisgarh)
2. D.P. Satpathy, Dy. General Manager, Education, Education Department, SAIL Bhilai Steel Plant, Bhilai, Dist. Durg (Chhattisgarh)
3. Smt. Jolly Mathai, Principal, BSP Sr. Secondary School, Sector-4, Bhilai, Distt. Durg (CG)

---- Petitioners

Vs

1. State Of Chhattisgarh Through Secretary, Labour Department, Govt. Of Chhattisgarh, Raipur, (CG)
2. Deputy Labour Commissioner (State), Nirmal Chhaya Bhawan, Miradatar Road, Shankar Nagar Raipur, (CG)
3. Ram Ajjaiyya, S/o Chinaiyya, R/o Block No. 1/A, Street No.-60, Sector-6, Bhilai Nagar, Tah & Distt Durg (CG)

---- Respondents

And

WPL No. 45 Of 2013

1. Pankaj Gautam, Ex. Chief Executive Officer, SAIL, Bhilai Steel Plant, Bhilai, Distt. Durg (Chhattisgarh)
2. D.P. Satpathy, Dy. General Manager, Education, Education Department, SAIL, Bhilai Steel Plant, Bhilai. Distt. Durg (Chhattisgarh)
3. Sourabh Sinha, Principal, BSP Sr. Secondary School, Sector - 10, Bhilai Distt. Durg (CG)

---- Petitioners

Vs

1. State Of Chhattisgarh Through Secretary, Labour Department, Govt. Of Chhattisgarh, Raipur (CG)
2. Deputy Labour Commissioner (State), Nirmal Chhaya Bhavan, Miradatar Road, Shankar Nagar, Raipur (CG)
3. B. Polamma, W/o B. Ramallu, R/o Block No. L.C.1-F, Labour Camp, Bhilai, Tahsil & Distt. Durg (CG)

---- Respondents

For Petitioners Dr. NK Shukla and Shri Prashant Jayaswal, Sr. Advocates
with Dr. Saurabh Kumar Pande, Shri Shailendra Shukla
and Shri Himanshu Sinha, Advocates.

For Respondent/State : Shri PK Bhaduri, Govt. Advocate.

For private Respondents : Shri HB Agrawal, Sr. Advocate with Smt. Meera
Jaiswal, Advocate.

Hon'ble Shri Justice Prashant Kumar Mishra

C A V Order

Passed on:14/7/2015

1. First batch of writ petitions i.e. WP(L) Nos.35/2012, 40/2012, 41/2012, 42/2012, 46/2012, 47/2012, 48/2012, 49/2012, 50/2012 have been preferred by the petitioners challenging the award passed by the Labour Court, Durg, reinstating the workmen in the services of the petitioners along with 50% back wages.
2. Second batch of writ petitions i.e. WP(L) Nos.197/2012, 198/2012, 163/2012, 41/2013, 44/2013, 42/2013, 43/2013, 45/2013 have been preferred by Shri Pankaj Gautam, Ex-CEO, SAIL/BSP, Shri D.P. Satpathy, Deputy General Manager, Education Department, SAIL, BSP and Shri G.S. Dehre, Principal, BSP Middle School, Bhilai (Petitioner No.3 is different in these matters) challenging the order passed by the Labour Commissioner, Raipur granting sanction to prosecute the petitioners for alleged non-compliance of the impugned award. Since the fate of the second batch of writ petitions depends on the fate of first batch of writ petitions, both the batches involving similar facts and grounds, they are being disposed of by this common order.
3. Facts of the case, briefly stated, are that the respondents/workmen raised an industrial dispute on submission, inter alia, that they were appointed by the Principal of Bhilai Steel Plant, Higher Secondary School as sweeper in October, 1997 to perform the job of cleaning of the class rooms, furnitures, urinal and toilets, providing water and other works of similar nature upon direction by the Principal. The workmen continued till 9.1.2001 and during this period, they worked for more than 240 days in just preceding calendar year. However, they were removed without any show cause notice, without assigning any reason or payment of retrenchment compensation.
4. In the award impugned in the first set of writ petitions, the second party was described as (1) Steel Authority of India Limited, through its Managing Director; (2) Chief Education Officer, Education Department, Bhilai Steel Plant and (3) Principal, Bhilai Steel Plant Higher Secondary

School. The opposite party Nos.(1) & (2) filed joint written statement to plead that they were not arrayed as party before the State Government nor any industrial dispute exists between them and the workmen; there is no relationship of master and servant between them and the workmen, therefore, the claim is not maintainable against them. Since the workmen have never worked under them, the claim petition deserves to be dismissed against them. The Principal of the Bhilai Steel Plant, Higher Secondary School filed a separate reply to plead that the workmen were appointed by the Parent Teacher Association (for short 'PTA') and they were not employed on regular basis. The Principal has neither appointed the workmen nor removed them from services, therefore, the claim petition be dismissed. The workmen were appointed by the PTA of the school which is constituted under Rule 66 of the MP Education Code (for short 'the Code').

5. On the basis of oral and documentary evidence adduced by the parties, the Labour Court, Durg allowed the claim petition on 27.1.2005 directing reinstatement of the workmen with 50% back wages. Challenging the said award, the President of the PTA and the Secretary cum Principal of the BSP Higher Secondary School preferred writ petitions; one such petition being WP No.5205/2005. The said writ petition was allowed by this Court vide order dated 26.6.2008 on the ground that the Labour Court has passed an award without recording any finding as to whether the workmen have worked for a period of 240 days in just preceding calendar year. This Court remitted the matter back to the Labour Court, Durg to consider the cases of the workmen afresh and record a finding as to whether the concerned employee has worked for 240 days or not and thereafter pass appropriate orders afresh, in accordance with law. In the said writ petition, an interim order was passed on 10.1.2006 directing deposit of back wages. However, it was further directed that the same may not be disbursed to the workmen till further orders. The PTA and the Secretary cum Principal of the school also directed the workmen to

resume the work, in purported compliance of the provisions contained in Section 17-B of the Industrial Disputes Act. This order was issued in compliance of interim order passed by the High Court in WP No.2008/05, as mentioned in Annexure-P/14 of WP(L) No.35/2012. It appears, the workmen were not satisfied because appointment was not offered by the management of the Steel Authority of India (for short 'SAIL') but the same was offered by the PTA.

6. During the remand proceedings, the parties were again provided opportunity to submit evidence, however, the petitioners failed to present their witnesses for cross-examination although affidavit under Order 18 Rule 4 CPC was filed by one of the witnesses. The Labour Court has recorded a finding that the workmen have issued notice to the management for production of attendance register, but the petitioners failed to comply despite the order passed by the Labour Court. The workmen otherwise asserted in their respective examination-in-chief and cross-examination that they have worked for more than 240 days. The Labour Court thus drawn adverse inference against the management/petitioners and concluded that the workmen have proved that they have worked for more than 240 days in each calendar year including the preceding year.
7. The main ground of challenge raised before this Court by Shri Shukla and Shri Jayaswal, learned Senior Counsel for the petitioners is based on submission that the BSP or SAIL is not the employer of the workmen, as they have been appointed by the PTA, therefore, direction against the management of the BSP is illegal. It is also argued that when the dispute was raised before the State Government, the BSP was not made a party, as the dispute was only found to exist between the workmen and the Principal of the School, therefore, for this reason also, the impugned award deserves to be quashed. They would rely on judgments in the matters of **M/s Firestone Tyre & Rubber Co. of India (P) Ltd., Vs.**

The Workmen Employed represented by Firestone Tyre Employees' Union¹, Manager, R.B.I., Bangalore Vs. S. Mani and others², Steel Authority of India Ltd., Vs. Union of India & Ors.³ and Bhogpur Co-op. Sugar Mills Ltd., Vs. Harmesh Kumar⁴.

8. Per contra, Shri Agrawal, learned Senior Counsel appearing for the workmen would submit that the School belongs to BSP and the workmen have been appointed by the Principal of the School, therefore, principal employer is the BSP and the award against the SAIL/BSP is fully justified. He would rely on the judgment in the matter of **Hari Nandan Prasad and another Vs. Employer I/R to Management of Food Corporation of India and another⁵**.
9. The issues for consideration are - (i) whether the workmen were appointed and were working under the PTA/Principal of the BSP Higher Secondary School or they were employed by the SAIL ? And (ii) Whether the finding that the workmen had worked for 240 days in the preceding calendar year is justified ?
10. The material produced by the parties before the Labour Court would indicate that the workmen were engaged and paid wages by the Principal of the School. There is no order or any other evidence indicating that the workmen were either appointed or paid wages by the management of the BSP. The Principal of the School has stated before the Court that the PTA has been constituted in compliance with the Code. The workmen were engaged by the said Association for the work of cleaning and providing drinking water facility. They were not engaged daily. The Principal has further stated that neither the BSP management nor he himself issued any order of appointment in favour of the workmen.

1 AIR 1981 SC 1626

2 AIR 2005 SC 2179

3 AIR 2006 SC 3229

4 AIR 2007 SC 288 (1)

5 (2014) 7 SCC 190

However, he admits that the school is run by the BSP.

11. The petitioners have contended that the PTA has been constituted in compliance of the Code. Copy of the Education Code available on record would indicate that the Association is to be constituted for coordination between the students and the school and to make endeavour for improvement in the functioning of the school. Thus, the work of the Association is not to manage affairs of the school. Ex.-D/1 is the order issued by the Education Department of the BSP whereby sanitation arrangement through private sanitary attendants engaged by the PTA has been continued with further stipulation that the cheques towards payment of sanitary arrangement through PTA may be collected from the Education Department. The order issued by the Education Department of the BSP on 28.5.2002 is also part of the record whereunder objectives, functions and the scope of PTA have been provided. Para-3.3 of the document has bifurcated the use of PTA funds. It provides that 50% of the fund shall be used for the school upkeep and safety. Ex.-D/2 is one such cheque whereby the SAIL has provided some funds in the name of Secretary, PTA.

12. Thus, a close scrutiny of the material available on record would indicate that the workmen were not engaged by the management of the BSP. There is no material to indicate that the Principal or PTA was otherwise entitled to make appointment on behalf of management of the SAIL. In the first statement, the workmen have stated that the Principal has engaged them for cleaning work of the school. The constitution, objectives and functions of the PTA would also indicate that the BSP constituted PTA for maintaining upkeep of the school and in that connection, the PTA engaged workmen for cleaning the school premises, urinals, toilets and providing water. Moreover, in the first award, the Labour Court directed the PTA to reinstate the workmen. There was no award against the SAIL or BSP. The workmen never approached this

Court by preferring a writ petition raising contention that they should have been treated as workmen engaged by the SAIL/BSP and the award should also have been directed against the said management to reinstate them. Thus, the Labour Court has committed serious illegality in passing the impugned award against the management of the SAIL/BSP.

13. The issue governing principles and tests to determine existence of employer-employee relationship is no longer *res integra*, as the same has been dealt with by the Supreme Court in several of its judgments, the latest one being the matter of **Balwant Rai Saluja and another Vs. AIR India Limited and others**⁶. Having discussed almost all previous judgments on the subject and after referring the judgment in the matter of **National Aluminium Co. Ltd. Vs. Ananta Kishore Rout**⁷, which also pertains to employees of the school established by Nalco, the Supreme Court held (In **Balwant Rai Saluja**) in paragraphs-62 to 65 thus:-

“62. A recent decision concerned with the employer-employee relationship was that of Nalco case (supra). In this case, the appellant had established two schools for the benefit of the wards of its employees. The writ petitions were filed by the employees of each school for a declaration that they be treated as the employees of the appellant company on grounds of, inter alia, real control and supervision by the latter. This Court, while answering the issue canvassed was of the opinion that the proper approach would be to ascertain whether there was complete control and supervision by the appellant therein. In this regard, reference was made to **Dharangadhra Chemical Works** case {AIR 1957 SC 264} wherein this Court had observed that : (Nalco case (supra), SCC pp.768-69, para 22)

“22. '14. The principle which emerges from these authorities is that the prima facie test for the determination of the relationship

6 (2014) 9 SCC 407

7 (2014) 6 SCC 756

between master and servant is the existence of the right in the master to supervise and control the work done by the servant not only in the matter of directing what work the servant is to do but also the manner in which he shall do his work, or to borrow the words of Lord Uthwatt at p.23 in **Mersey Docks and Harbour Board Vs. Coggins & Griffith (Liverpool) Ltd.**, {(1946) 2 All ER 345 (HL)}, “The proper test is whether or not the hirer had authority to control the manner of execution of the act in question”.' (Dharangadhra Chemical Works case (supra) AIR p.268, para 14)” (emphasis supplied)

63. The Nalco case (supra) further made reference to **Workmen of Nilgiri Coop. Mktg. Society Ltd. Vs. State of T.N.** {(2004) 3 SCC 514} wherein this Court had observed as follows: (Nalco case, supra, SCC p.771, para 27)

“27. '37. The control test and the organisation test, therefore are not the only factors which can be said to be decisive. With a view to elicit the answer, the court is required to consider several factors which would have a bearing on the result: (a) who is the appointing authority; (b) who is the paymaster; (c) who can dismiss; (d) how long alternative service lasts; (e) the extent of control and supervision; (f) the nature of the job e.g. whether it is professional or skilled work; (g) nature of establishment; (h) the right to reject.

38. With a view to find out reasonable solution in a problematic case of this nature, what is needed is an integrated approach meaning thereby integration of the relevant tests wherefor it may be necessary to examine as to whether the workman concerned was fully integrated into the employer's concern meaning thereby independent of the concern although attached therewith to some extent.'

(Workmen of Nilgiri Coop. Mktg. Society case (supra), SCC p.529, paras-37-38)”

64. It was concluded by this Court in Nalco case (supra) that there may have been some element of control with Nalco because its officials were nominated to the Managing Committee of the said schools. However, it was observed that the abovesaid fact was only to ensure that the school run smoothly and properly. In this regard, the Court observed as follows : (SCC p.772, para 30)

“30.....However, this kind of 'remote control' would not make Nalco the employer of these workers. This only shows that since Nalco is shouldering and meeting financial deficits, it wants to ensure that the money is spent for the rightful purposes.

65. Thus, it can be concluded that the relevant factors to be taken into consideration to establish an employer-employee relationship would include, inter alia:

- (i) Who appoints the workers;
- (ii) who pays the salary/remuneration;
- (iii) who has the authority to dismiss;
- (iv) who can take disciplinary action;
- (v) whether there is continuity of service;
- and
- (vi) extent of control and supervision i.e. whether there exists complete control and supervision.

As regards extent of control and supervision, we have already taken note of the observations in **Bengal Nagpur Cotton Mills** case {(2011) 1 SCC 635}, **International Airport Authority of India** case {(2009) 13 SCC 374} and **Nalco** case {(2014) 6 SCC 756}.”

14. Applying the test laid down by the Supreme Court in **Balwant Rai Saluja** (supra) and **NALCO** (supra), in the facts of the present cases, it is

to be seen that the workmen were never appointed by the SAIL/BSP. Their salary/wages/remuneration was paid by the Parent Teacher Association. There is no pleading by the workmen nor any material to suggest that the BSP/SAIL has any authority to dismiss or take any disciplinary action against them. The SAIL/BSP may run or control the school and the PTA but there was no direct control or supervision over the workmen who were reporting to the school and not to the management of the SAIL/BSP. Thus, this Court is of the considered opinion that there does not exist any employer-employee or master-servant relationship between the management of the SAIL/BSP and the workmen.

15. The Labour Court has recorded a finding that the workmen have worked for more than 240 days in a calendar year. To substantiate such claim made in the statements of claims, the workmen examined themselves. Since the Principal or PTA did not submit the record to disprove the said statement, the workmen moved application for production of attendance register from July, 1997 to January, 2001 and April, 2008 to July, 2008. The Labour Court passed an order on 23.10.2009 directing the petitioners to produce the documents, however, the petitioners failed to produce any document. In such circumstances, the Labour Court rightly drawn adverse inference against the petitioners and concluded that the workmen have worked for more than 240 days in the preceding calendar year. Before this Court also, the petitioners have made oral submissions, however, nothing has been produced to prove that the finding recorded by the Labour Court is perverse. Thus, the finding recorded by the Labour Court is entirely in accordance with law because the workmen have discharged initial burden but the petitioners failed to discharge the burden shifted on them.

16. WP(L) No.197/2012 and similar other matters have been preferred by Shri Pankaj Gautam, Ex-CEO, SAIL/BSP, Shri D.P. Satpathy, Deputy

General Manager, Education Department, SAIL, BSP and Shri G.S. Dehre, Principal, BSP Middle School, Bhilai (Petitioner No.3 is different in these matters) challenging the order passed by the Labour Commissioner, Raipur granting sanction to prosecute the petitioners for alleged non-compliance of the impugned award.

17. In view of the finding recorded in the preceding paragraphs that the workmen were not employed by the SAIL/BSP, sanction to prosecute petitioner Nos.1 and 2 namely, Shri Pankaj Gautam and Shri D.P. Satpathy who are the officers of SAIL/BSP, deserves to be and is hereby quashed. Proceeding with respect to petitioner No.3 in each of the second batch the writ petitions preferred by Shri Pankaj Gautam and 2 others is maintainable. However, since challenge to the award was pending before this Court and in the meanwhile, sanction to prosecute has been granted, the said petitioners No.3 deserve sufficient time to comply with the order passed by the Labour Court. Therefore, criminal proceeding initiated against them shall remain in abeyance for a period of 3 months. If compliance of the award is not made, the proceeding may continue against them thereafter.

18. In the result, all the writ petitions are thus allowed in part in the following terms:-

- WP(L) Nos.35/2012, 40/2012, 41/2012, 42/2012, 46/2012, 47/2012, 48/2012, 49/2012, 50/2012, preferred by the PTA and 2 others are allowed in part.
- The award insofar as it is directed against the management of SAIL/BSP is set aside. However, it will remain operative against the other petitioners.
- WP(L) Nos.197/2012, 198/2012, 163/2012, 41/2013, 44/2013, 42/2013, 43/2013, 45/2013 filed by Shri

Pankaj Gautam and Shri D.P. Satpathy are allowed only in favour of petitioner Nos.1 and 2. Sanction to prosecute them is quashed. Prayer made by petitioner No.3 in these writ petitions is rejected. Proceeding against them may continue, however, it shall remain in abeyance for a period of 3 months affording time to the said petitioners to comply with the award, failing which proceeding shall continue thereafter.

Sd/-

Judge
(Prashant Kumar Mishra)

Barve