

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Judgment reserved on: 24/01/2019****Judgment delivered on:31/01/2019****WP No. 685 of 2006**

- Ram Suresh Singh, aged about 43 years, S/o Late Ram Singhasan Singh, R/o Gulai Dhapai, North Jhagrakhad, District-Korea, Chhattisgarh.

---- Petitioner**Versus**

1. South Eastern Coalfields, Ltd, through its Chairman cum Managing Director, Seepat Road, Bilaspur, Chhattisgarh.
2. Chief General Manager, Hasdeo Area, P.O. South Jhagrakhand Colliery, District-Korea, Chhattisgarh.
3. Singhi Collieries Education Society, Through its Principal, H.S. School North Jhagrakhand Colliery, District-Korea, Chhattisgarh.

---- Respondent

For the Petitioner	: Shri Gary Mukhopadhyay, Advocate.
For Respondents No.1 & 2:	Shri Vinod Deshmukh, Advocate.
For respondent No.3	: None.

Hon'ble Shri Justice Rajendra Chandra Singh Samant**CAV ORDER****31.01.2019**

Heard.

1. This petition has been brought for issuance of appropriate writ directing the respondents to make payment of salary and emoluments of the period between the date of his dismissal and reinstatement in the service.

2. It is submitted by the counsel for petitioner, that petitioner was working as teacher in Higher Secondary School, Singhi Collieries Education Society, South Jhagrakhand Colliery South Bastar, District-Koria from April 1988. Services of the petitioner were terminated by order dated 27.7.1996 against which the petitioner filed writ petition bearing No.1629/1998 and the learned Single Judge vide order dated 19.11.2001 passed the following order:-

“The writ petitioner shall be reinstated forthwith. It is open to the competent authority to make enquiry against the writ petitioner. However, I shall make it clear that if enquiry is made, the entire proceeding of enquiry shall be completed at the earliest and at any rate not later than 31st March, 2002. if the enquiry as such as conducted the back wages from the date of termination till the date of reinstatement shall depend on the result of the enquiry.”

3. It is submitted that there was a specific direction of this Court. However, neither any inquiry was conducted against the petitioner nor he was reinstated in service. Thereafter the petitioner preferred a contempt petition bearing No. 1622/1998 and subsequent to passing of the order by this Court dated 19.11.2001 in contempt proceeding, the petitioner was reinstated in service vide office order dated 5.8.2005 and accordingly the petitioner joined his duties. The respondents have utterly failed to comply with the specific direction of this Court given in the said order and no inquiry was conducted within the stipulated time till date. Therefore, in absence of any such inquiry

or report, the petitioner has become entitled for salary and other emoluments of the relevant period i.e. from the date of his dismissal to the date of his reinstatement. In these circumstances, the writ petition be allowed and reliefs as prayed for be granted to the petitioner.

4. Learned counsel for respondents No.1 & 2 submits, that petitioner was appointed by respondent No.3 as a Teacher in its school and he was terminated by the order dated 27.7.1996 passed by respondent No.3 itself. Respondent No.3 is the employer of the petitioner and there is no relation of employer and employee between the respondent No.1 & 2 with the petitioner. Respondent No.3 Singhi Collieries Education Society is a society registered under the M.P. Societies Registration Act, 1959. The schools run by the society are managed by the society itself and financial aid is provided by the State Government. Respondents No.1 & 2 have no direct control over the affairs of the said society and the school run by it, except giving time to time financial & infrastructure assistance, which is purely by way of welfare measure provided to schools performing in the colliery areas. Relying upon the decision of the Division Bench of this Court in Writ Petition No.33/2011 Bharat Singh Baghel & others Vs. SECL & othes, in which it was held that as it has been decided by Supreme Court in **S.C. Chandra Vs. State of Jharkhand**, reported in (2007) 8 SCC 279, that only for the reason that an institution is extending financial assistance from time to time, the liability to pay salary and other benefits cannot be saddled on this ground on the institution extending such financial assistance and there has to be a master and servant relationship between the parties. It was also held by the Supreme

Court in the same case that the employees of Railway Club and Railway Canteen cannot become the employees of Railways only on the ground that they were managed by the railway department.

5. It is also submitted that in a similar case of Jayant Kumar Shrivastava Vs. SECL & Ors in WP(S) No.6298/2010, decided on 15.1.2019 in which respondent No.3 of this case was also a party, the Single Bench of Hon'ble the Chief Justice has similarly held that a school run by a society is not under the command or control or limb of respondent SECL, therefore, the SECL has no liability. Hence, this petition is not maintainable against respondents No.1 & 2.
6. It is not disputed that petitioner was a teacher in the school run by respondent No.3 Singhi Collieries Education Society. The order of dismissal (Annexure-P1) was passed by respondent No.3, subsequent to that the order of reinstatement was also passed by the Principal of said school which is a concern of the Singhi Collieries Education Society. The petitioner has not been able to produce any document in this respect that he had been employed by respondents No.1 & 2. As per ratio laid down by Hon'ble Supreme Court in S.C. Chandra's case (supra), the judgment of this Court in Bharat Singh Baghel's case (supra) & Jayant Kumar Shrivastava's (supra), it is found that the issue in this case is no longer res integra. Therefore, without there being any proof of relationship of master and servant between petitioner and respondent No.1 & 2, the claim in this respect is not maintainable against these respondents. However, the respondent No.3 is liable to make payment on the basis of claim so made by the petitioner on account of failure to follow and comply with direction of

this Court in WPS No.1622/1998.

7. After due consideration, it is found that this petition is not maintainable against the respondents No.1 and 2. However, the claim of the petitioner against the respondent No.3 is still maintainable.
8. Accordingly, the petition is dismissed and disposed off with the observation made as aforesaid.

Sd/-

(Rajendra Chandra Singh Samant)
Judge

Nisha