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HIGH COURT OF CHHATTISGARH, BILASPUR**Order Reserved on : 03/02/2020****Order Delivered on : 09/06/2020****Writ Petition (S) No. 3665 of 2017**

1. Yog Mani Agnihotri son of Shri Sampat Kumar Agnihotri, aged about 60 years, Head Master, Primary School Pauradhar, District Anuppur, Madhya Pradesh.
2. Audhesh Kumar Tiwari son of late Shri Tribhuwan Nath Tiwari, aged about 62 years, Teacher, R/o. Pauradhar, Post Jhimar, District Anuppur, Madhya Pradesh.
3. Brij Bihari Pandey son of Shri Baijnath Pandey, aged about 59 years, Teacher, Higher Secondary School Jhagrakhand Colliery, District Korea, Chhattisgarh.
4. Chandrika Prasad Verma son of late Shri Parasram Verma, aged about 50 years, Teacher, Higher Secondary School, Jhagrakhand Colliery, District Korea, Chhattisgarh.
5. R.S. Sharma son of Shri Maithili Sharan Sharma, aged about 58 years, Lecturer, Higher Secondary School, Jhagrakhand Colliery, District Korea, Chhattisgarh.
6. Subhash Chandra Jha son of Shri Neva Lal Jha, aged about 55 years, Peon, Higher Secondary School, Jhagrakhand Colliery, District Korea, Chhattisgarh.
7. Kamal Kishore Vishwakarma son of Shri Ram Naresh Vishwakarma, aged about 52 years, Peon, Higher Secondary School, Jhagrakhand Colliery, District Korea, Chhattisgarh.
8. Nirpat Singh Rajput son of Shri Ram Singh Rajput, aged about 55 years, Peon, Higher Secondary School, Jhagrakhand Colliery, District Korea, Chhattisgarh.
9. Rajendra Kumar Mourya son of Shri Baldeo Ram Maurya, aged about 55 years, Teacher, Higher Secondary School, Jhagrakhand Colliery, District Korea, Chhattisgarh.
10. Rekha Rani Khare wife of late Shri Krishna Kumar Khare, aged about 60 years, Assistant Grade-II, Higher Secondary School, Jhagrakhand Colliery, District Korea, Chhattisgarh.
11. Mukut Mani Tripathi son of late Shri Jagdamba Prasad Tripathi, aged about 59 years, Assistant Grade-I, Higher Secondary School, Jhagrakhand Colliery, District Korea, Chhattisgarh.
12. Devmani Pandey son of late Shri Ram Pratap Pandey, aged about 61 years, Teacher, Higher Secondary School, Jhagrakhand Colliery, District Korea, Chhattisgarh.
13. Trilok Nath Dubey son of late Shri Ram Akshabar Dubey, aged

about 57 years, Lecturer, Higher Secondary School, Jhagrakhand Colliery, District Korea, Chhattisgarh.

14. Raj Kumar Tripathi, son of late Shri Swaminath Tripathi, aged about 59 years, Assistant Librarian, Higher Secondary School, Jhagrakhand Colliery, District Korea, Chhattisgarh.

---- Petitioners

Versus

1. State Of Chhattisgarh, through the Secretary – Department of School Education, Mahanadi Bhawan, Mantralaya, New Raipur, District Raipur, Chhattisgarh.
2. South Eastern Coalfields Limited, through its Chairman-cum-Managing Director, Seepat Road, Bilaspur, District Bilaspur, Chhattisgarh.
3. Chief General Manager, SECL, Hasdeo Area, post South Jhagrakhand Colliery, District Korea, Chhattisgarh.
4. District Education Officer, Baikunthpur, District Korea, Chhattisgarh.
5. Singhi Colliery Education Society, through its Chairman/ Area General Manager, SECL, Hasdeo Area, post South Jhagrakhand, District Korea, Chhattisgarh.
6. Assistant Registrar, Firms and Societies, Bilaspur, District Bilaspur, Chhattisgarh.

---- Respondents

For the Petitioners	: Shri Kishore Bhaduri and Shri Sunny Agrawal, Advocates.
For Respondent No.1/State	: Shri Sudeep Verma, Dy. G.A.
For Respondents No. 2 to 6	: Shri Vaibhav Shukla and Ms. Astha Shukla, Advocates.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

CAV ORDER

Heard.

1. This petition has been brought by the petitioners praying for relief against the respondents by exercising jurisdiction under Article 226 of the Constitution of India.

2. The facts of the case are that the petitioners are working as teachers/ staff in various schools run by a society called Singhi Collieries Education

Society, Jhagrakhand Colliery, Hasdeo Area, Korea since about 23 years before the filing of this petition in the year 2017. The Singhi Colliery Education Society was registered in the year 1963 and started receiving grant-in-aid from the government. In the year 1973, all the coal mines were nationalized and the assets of Jhagrakhand Colliery Private Limited were also taken over by Coal Mines Authority Limited, which is at present Coal India Limited. These schools were originally established by Jhagrakhand Private Limited. The Managing Director of the Company and various collieries had been as official members of the Education Society also opened new schools subsequently. Subsequent to nationalization of the collieries in the year 1973 by Coal Mines Authority Limited which is now Coal India Limited, the circumstances changed and the South Eastern Coalfields Limited started sponsoring the central schools.

3. The petitioners came to know that they were not equally paid compared to the teachers and staff in Central School. The society filed W.P. (S) No. 3536 of 1993 praying for release of salary withheld for several months in the intervening period. The Court admitted the petition and passed an interim order on 13.9.1993, directing the SECL and the Education Society to release the salary of the petitioners. The SLP filed by the respondents in that case before the Supreme Court was dismissed. Subsequently, W.P.(S) No. 3536 of 1993 was withdrawn after a settlement of the petitioners with the respondents. The memorandum of settlement was drawn on 6.12.1994. It is alleged that the SECL was not complying with the terms of settlement. The petitioners then approached the Regional Labour Commissioner, Jabalpur and then an order dated 4.6.1996 was passed

against the respondent No.2/ SECL directing to deposit the amount in terms of the settlement.

4. Respondent No.2 – South Eastern Coalfields Limited then approached the High Court in W.P. No. 349 of 1997 and the High Court passed an order on 2.5.1997, directing to conduct a fact finding enquiry whether there exists employee/ employer relationship between the teachers of the Society and the SECL. Regional Labour Commissioner (RLC) conducted the enquiry and submitted its report on 8.1.1998, in which the enquiring authority had concluded, that the Education Society was under the control of management of SECL, Hasdeo Area, therefore, there exists a relation of master and servant between the SECL and the petitioners. Subsequent to which, the Madhya Pradesh High Court has passed an order in favour of the petitioners. The order in writ petition was finalized as it was not challenged any further. The respondents even then did not comply with the order and the RLC was compelled to issue RRC against the respondents which was challenged by the respondents' side in W.P. No. 3409 of 2000, in which the order was passed in favour of the respondents, which was challenged in the Supreme Court by the petitioners and then by virtue of the order granting interim relief passed by the Supreme Court in favour of the petitioners in SLP No. 19994 of 2000 vide order 19.2.2001, these petitioners started getting their salaries. In the meanwhile, State of Chhattisgarh and the Chhattisgarh High Court came into existence and W.P. No. 3409 of 2000 has been decided on 22.11.2000, by which the order of Regional Labour Commissioner dated 29.3.2000 in RRC dated 10.5.2000 was quashed. The issue regarding on the point of master and servant relationship was not

decided in that order. In the meanwhile, another W.P. No. 2667 of 2006 (Bharat Singh Baghel and Others vs. SECL and Others) was filed by the employees of the schools run by Jhagrakhand Colliery which was disposed off by the order dated 13.7.2010 by a Single Bench, directing the petitioners to file a representation before the respondents in accordance with the settlement dated 6.12.1994 and the MOU dated 29.3.1995 with a direction to the respondents to decide the same within a time frame.

5. Writ Appeal No. 33 of 2011 was filed by the petitioners' concerned, in which the Division Bench of this High Court declined to interfere in the order of Single Bench. The representations filed by the petitioners have not been decided in their favour by the respondents' side.

6. It is submitted by learned counsel for the petitioners that earlier there had been no relationship of the master and servant of the petitioners with respondent No.2, but there exists the relationship of master and servant between the petitioners and the respondents. The Education Society was though constituted at the behest of the private collieries but the same was never registered, therefore, the Education Society and the schools under it were separate body. It is further submitted that subsequent to opening of central schools in the area, teachers and other employees in the schools under Education Society started making demand of salary at par with the teachers and employees of the Central School. The order of the Regional Labour Commissioner had been in favour of the petitioners, when this order was challenged in the High Court in W.P. No. 3409 of 2000 then by orders of High Court, the Regional Labour Commissioner made an enquiry about the

relationship of the petitioners with the respondents and in the report it was mentioned that the involvement of the SECL is to the extent of giving grants to these schools and the schools have also been provided with buildings and furniture by the SECL. It was also reported that the teachers were employed by Singhi Collieries Education Society. It was argued that in the eyes of law, the office bearers of the society who are the officers of the SECL; the officers of the management are supervising and controlling the working of schools and there is a settlement between the management and the petitioners with regard to the payment of salary. On the basis of this argument, the finding was given that the teachers employed in Singhi Collieries Education Society under the management of SECL are also employees and staff of the SECL. Subsequent to first round of litigation, the memorandum of settlement dated 6.12.1994 was executed between the parties and subsequent to that, the memorandum of understanding dated 29.3.1995 was also executed between the parties.

7. It is submitted by counsel for the petitioners that subsequent to the execution of memorandum of understanding, the petitioners on being assured by the respondents' authorities, have withdrawn W.P. No. 349 of 1997, making a settlement that they do not want to press upon the report of the Regional Labour Commissioner. It is further submitted that W.P. No.3409 of 2000 has been decided invoking the provision under Section 33-C(1) of the Industrial Disputes Act, 1947, which is not applicable to the petitioners who are teachers and other staff. It is held in the order dated 22.11.2005, in paragraph 24, that the teachers are not workmen under the provisions of Industrial Disputes Act. It is also submitted that the education society is

clearly run by the management of the SECL, which is confirmed by the office order dated 1.2.1995 (Annexure – P/14) by which the SECL has appointed an officer as Secretary of Singhi Colliery Society. It was for the reason that the master and servant relationship existed, the respondents entered into an agreement and executed the MOU and thereby, Clause 7 of the MOU itself mentions that the Principal of Educational Institutions shall exercise the disciplinary powers on teachers and staff with the approval of Chief General Manager/ Chairman of the Managing Committee which show the existence of master and servant relationship. Therefore, the petitioners are entitled for the reliefs as prayed for.

8. Learned counsel for respondents No.2 and 3 opposes the submissions made by counsel for the petitioners in this respect and submits that the Supreme Court had in SLP No. 19994 of 2000 vide order 19.2.2001 left the question open to be decided by the High Court whether the schools are run by the State or Central Government. Accordingly, the High Court in W.P. No. 3409 of 2000 very clearly held that the teachers are not workmen under the provisions of Industrial Disputes Act and it was held that the relationship of employer and employee has not been found.

Placing reliance on the judgment in W.P. No. 685 of 2006 decided on 31.1.2019, it is submitted that it has been similarly held by this Court that there is no relationship of master and servant between the parties and the petitioner in that case had been a teacher in a school run by Singhi Collieries Education Society. It is further submitted that the principle of res judicata is applicable in this matter because the question raised by the petitioners is already decided by this Court in the earlier petition filed. In another petition

filed by **Bharat Singh Baghel and 42 Others vs. South Eastern Coalfields Limited and Others** in **W.P. No.2667 of 2006** decided on 13.7.2010, it has been observed that the question of relationship of employer and employee between the teachers of Singhi Collieries Education Society and SECL was already decided in W.P. No.3409 of 2009 that such relationship is not present, hence, it cannot be re-agitated and the same has been upheld by the Division Bench of this Court in W.A. No. 33 of 2011. The contempt petition filed by the petitioners in Contempt Case No.401 of 2015 has also been dismissed by the order dated 12.4.2017. As per the directions given in the order of writ petition, the petitioners made representation before the respondents which has been decided and the order passed by this Court has been complied by which, respondent No.2 is making a payment of Rs.13,70,000/- as grant-in-aid to the Educational Society annually. Hence, the question raised in this petition cannot be reconsidered and no relief can be granted to the petitioners. The petition is liable to be dismissed.

9. Learned State counsel appearing for respondent No.1 formally objects the petition and prays for its dismissal.

10. In reply, it is submitted that the principle of res judicata was not applicable in this case for the simple reason that the prayer that has been made in this petition is based on the memorandum of understanding dated 29.3.1995 which had not been an issue in the previous cases, therefore, the petition is maintainable and deserves to be allowed.

11. Heard counsel for both the parties and perused the documents.

12. The petitioners prayed for reliefs in the petition in paragraph No.10 is as under:

'10.1. That, this Hon'ble Court direct the respondent SECL to contribute necessary fund to deficit to enable the Society to pay the petitioners regularly herein and other teachers according to the government pay scales with all admissible allowances and facilities as paid to them upto July-1989 and further till Jan.-1995 (under the settlement) and from Feb.-2001 to Sept.-2005 and as paid as per order of Hon'ble Supreme Court dated 19.2.2001 passed in SLP No. 1994/2000 to which they are entitled as per numerous records to the mode they paid directly earlier through Bank Account of the employees.

10.2. That, respondents No.2 & 3 be directed to make necessary payments of the entire arrears of difference of wages and salaries from Feb.1995 till date with 12% per annum interest. (The difference amount would be calculated deducting the total amount being paid as per the interim order in SLP No. 19994/2000 from the amount paid to the teachers as per MOU dated 29.3.1995 fixed amount of Rs.13.70 lakhs).

10.3. That, respondents No.2 & 3 be directed to convene meeting for reasonable revision of MOU dated 29.3.1995 by proper representation of the parties as per representation dated 1.10.2014.

10.4. That, respondents No.2 & 3 be directed to reorganize the society as agreed as per clause 7 & 8 of MOU and various clauses of settlement dated 6.12.1994 cooperating in functioning of the society for the proper running of the school with maintenance in all respects.

10.5. That, this Hon'ble Court may further direct the respondent SECL to pay the cost of such long litigation and

sufferings caused by them the petitioners have suffered for about more than two decades.

10.6. That, respondents No.2 & 3 be directed to run the society and the school in future in the larger interest of nation building.

10.7. Any other relief, which this Hon'ble Court may deem fit and proper, may also be passed in favour of the petitioners together with cost of the petition.'

13. During the pendency of this petition order dated 12.12.2018 was passed directing the petitioners to file a representation before respondents No.2 and 3 and also directing to convene a meeting in accordance with clause 6 of the MOU within a period of two months.

Clause 6 of the MOU dated 29.3.1995 is as under:

'6. In case the financial assistance from the Management is sought for an amount exceeding Rs.13 lakhs 70 thousand in any year, increase beyond the amount of Rs.13 lakhs 70 thousand will be decided by the Management in consultation with the Union and the Principal.'

14. In compliance of this order, the representation was made by the petitioners a meeting was convened, but the prayer made by the petitioners for enhancement of salary, allowances and other facilities was declined. It has been previously decided in number of writ petitions that there does not exist any relationship of master and servant between the petitioners and respondent No.2 and according to the terms agreed with the parties in MOU dated 21.3.1995, it was mentioned that the management of SECL was not directly concerned with the society of the teachers and the matter was discussed as a special case for good will. On that basis the monetary aid

was given to the Education Society. In the case of **S.C. Chandra vs. State of Jharkhand** reported in **(2007) 8 SCC 279**, it has been held in paragraphs 11, 12 and 13 is as under:

'11. The proprietary secondary school is defined under Section 2(d) of the Act. The State Government can declare a particular school as proprietary secondary school under Section 19 of the Act on fulfilling certain conditions but the basic thing is that the entire finance will have to be burdened by the trust, association, corporate body, individual or group of individuals. By that the employees of the school will not be State Government employees.

12. A counter-affidavit was filed on behalf of the State of Jharkhand supported by the affidavit of Shri Rajendra Nath Tripathy, Regional Deputy Director of Education, South Chhota Nagpur Division, Ranchi and in Para 12 of the counter-affidavit it was pointed out that in order to fulfill the constitutional mandate that all children between 6-14 years of age shall be given free and compulsory education, the Jharkhand Government has given consent and directed the authorities concerned to take the students of this school and admit them in State Committee managed schools or in other government schools within the same area in equivalent classes in which they were studying. Copy of the letter dated 15.3.2003 has been annexed as Annexure R-1. Therefore, the Government of Jharkhand in order to fulfill the constitutional mandate has got these students admitted to various schools. Therefore, the studies of the students have not been affected.

13. So far as issuance of mandamus to the State Government for taking over of the proprietary school is concerned, that cannot be issued because the proprietary school as defined under Section 2 (d) read with Section 19 of the Act will have to make a request to the State of Jharkhand that they will bear all the financial responsibilities. If the Managing Committee makes a request to this effect to the State of Jharkhand, then the Government may consider but at present there is no such offer by the Managing Committee and as such no direction can be given to the State of Jharkhand to grant recognition to proprietary school because nobody is prepared to take the financial responsibilities of the management of the school. Hence, no direction can be issued to the State Government to take over the management of the school.'

Therefore, in view of the clear principle laid down by the Supreme Court in the judicial authority, this Court is not in a position to dictate the respondent to revise the MOU dated 29.3.1995, as it is a policy matter and also decision can be taken only by the governing body of respondent No.2. As per the pronouncements of the Courts so far, it is very clearly held that the role of respondent No.2 is limited in providing grant-in-aid to Singhi Collieries Education Society. Thus, it being the fact of relation between the petitioners and respondent No.2, the prayer made by the petitioners cannot be entertained.

15. There is no need to discuss on the issue reiterated by the petitioners' side regarding the relationship between the petitioners and respondent No.2 for the reason that this has been already settled in the earlier orders passed

in writ petitions filed by the persons concerned from the Singhi Collieries Education Society, hence, principle of res judicata is also applicable in this matter.

16. After overall consideration, I am of this view that this petition is without any substance and it is dismissed.

Sd/-

(Rajendra Chandra Singh Samant)
Judge