

HIGH COURT OF CHHATTISGARH AT BILASPUR**Writ Petition (S) No. 3829 of 2008****Order reserved on 25/06/2021****Order delivered on 01/09/2021**

Arun Kumar Rana S/o Shri Chhatthu Rana, Aged about 45 years, Occupation Service, SECL working as Mining Sardar (S.C.P.A.) R/o New Colony, Dhelwadih, Qtr. No. B/157, Post Katghora, Korba, Distt. Korba, Chhattisgarh.

---Petitioner**Versus**

1. South Eastern Coalfields Limited through the Chairmain-cum-Managing Director, Head Quarter, Seepat Road, Bilaspur, Chhattisgarh.
2. The Director (Personnel), S.E.C.L. Head Quarter, Seepat Road, Bilaspur, Chhattisgarh.
3. Chief General Manager, S.E.C.L. Korba Area, Distt. Korba, Chhattisgarh.
4. The Superintendent of Mines, S.E.C.L. Bagdeva Project, Post Katghora, Distt. Korba, Chhattisgarh.

--- Respondents

For Petitioner :- Mr. Ashok Kumar Shukla, Advocate

For Respondents:- Mr. H.B. Agrawal, Senior Advocate
with Mr. Sudhir Kumar Bajpai,
Advocate

Hon'ble Shri Justice Sanjay K. Agrawal**C.A.V. Order**

1. The petitioner herein calls in question legality validity and correctness of the order dated 06/06/2008 (Annexure P-2) by which the appellate authority / respondent No.2 has dismissed his appeal affirming the order dated 18/02/2008 (Annexure P-1) dismissing the petitioner from service passed by the disciplinary authority.
2. The petitioner herein, at the relevant point of time, was working as Safety-cum-Production Assistant (Mining Sardar) in Bagdeva Colliery of SECL. On account of certain charges of misconduct, the Disciplinary Authority held that it is not practicable to hold inquiry against the petitioner and straightway proceeded to impose penalty upon him and by its order dated 18/02/2008 (Annexure P-1) he was dismissed from service. The said order of dismissal (Annexure P-1) was assailed by the petitioner before this Court in Writ Petition (S) No. 1716/2008 which was disposed off by this Court by order dated 20/03/2008 (Annexure P/11) relegating the petitioner to avail alternative remedy available to him in terms of the applicable Standing Orders. Accordingly, the petitioner filed an appeal before the Appellate Authority against the order of dismissal (Annexure P-1), which was

dismissed by the appellate authority by order dated 06/06/2008 (Annexure P-2). Thereafter, the petitioner filed this writ petition against his order of dismissal from service (Annexure P-1) as well as against the order of the Appellate Authority dismissing his appeal (Annexure P-2). This Court vide order dated 13/01/2014 disposed of the writ petition granting liberty to the petitioner to avail the alternative remedy raising industrial dispute before the Labour Court and directing the said Court to decide it in accordance with law. The order dated 13/01/2014 was challenged by the petitioner in Writ Appeal No. 98/2014 whereby the Writ Appeal Court by its order dated 07/08/2014 allowed the appeal partly and sent back the matter to the Writ Court for deciding the petition after finding out whether petitioner is a 'workman' or not within the meaning of Section 2(s) of the Industrial Disputes Act, 1947 (in short 'the Act of 1947'). Subsequently, when the matter was taken up for hearing again, this Court vide order dated 08/02/2019 allowed the writ petition by setting aside the order of petitioner's dismissal from service dated 18/02/2008 (Annexure P-1) and the order of the Appellate Authority dated

06/06/2008 (Annexure P-2), but Writ Appeal No. 261/2019 was preferred by the petitioner seeking backwages and Writ Appeal No. 346/2019 was also preferred by the respondents/SECL against the order passed by the Writ Court on 08/02/2019, which were decided by a common order dated 07/08/2019 whereby the order dated 08/02/2019 passed by the Writ Court was set aside and it has held that the Writ Court should decide the mandate of order dated 07/08/2014 passed in Writ Appeal No. 98/2014 as to whether the petitioner is a 'workman' in terms of Section 2(s) of the Industrial Disputes Act, 1947 (in short 'the Act of 1947') and thereafter, to proceed in accordance with law.

3. In order to comply with the order in writ appeal, this Court by order dated 10/6/2021 directed as under:-

"Since a finding has to be recorded in this regard that whether a 'Mining Sardar' comes within the definition of 'workman' or not and since it is a mixed question of fact and law, therefore, respondents – SECL is directed to file an affidavit not below the rank of the Director clearly stating the work & responsibilities and duties to be discharged by a 'Mining Sardar' so as to find out whether he comes within the definition of 'workman' or not including documents, rules and regulations and the standing orders, if any."

4. Pursuant to order dated 10/6/2021, affidavit has been filed by the petitioner stating that he is not a 'workman' within the meaning of Section 2(s)(iv) of the Act of 1947 and respondents/SECL have also filed a counter-affidavit supported by the affidavit of Director (Finance) stating that petitioner who was working on the post of Mining Sardar at the time of his dismissal, would fall within the meaning of 'workman' as per Section 2(s)(iv) of the Act of 1947 and as such, the writ petition deserves to be dismissed on this short ground alone relegating the petitioner to avail the remedy of raising industrial dispute.
5. Mr. Ashok Kumar Shukla, learned counsel for the petitioner, would submit that petitioner would not come within the purview of a 'workman' as per Regulation 44 of Coal Mines Regulations, 1957 which provides duties and responsibilities of 'Mining Sardars' i.e. the post on which the petitioner was working at the time of his dismissal and moreover, the order of dismissal (Annexure P-1) was passed without even holding an inquiry, which is in teeth of decisions rendered by the Supreme Court in the matters of Uptron India Ltd. v. Shammi Bhan and

Another¹ and H.R. Adyanthaya and Others v. Sandoz (India) Ltd. and Others².

6. Mr. H.B. Agrawal, learned senior counsel appearing on behalf of respondents/SECL, would submit that Regulation 44 of Coal Mines Regulations, 1957 and other documents filed along with the additional affidavit would clearly show that the duties and responsibilities attached to the post of 'Mining Sardar' are that of a 'workman' defined under Section 2(s) of the Act of 1947. Therefore, the writ petition, as framed and filed, is not maintainable and that is the reason why the Writ Appeal Court has directed to decide specifically as to whether the petitioner would fall within the meaning of 'Workman' or not. He would further submit that the petitioner was instrumental in provoking other workmen to go on strike and paragraph 9 of the dismissal order dated 18/02/2008 (Annexure P-1) would clearly show that inquiry was conducted and charges levelled against the petitioner were found proved against him, which led to his dismissal from service. As such, order affirming order of dismissal is strictly in

¹ (1998) 6 SCC 538

² (1994) 5 SCC 737

accordance with law and the writ petition deserves to be dismissed.

7. I have heard learned counsel for the parties, considered their rival submissions made hereinabove and went through the records with utmost circumspection.

8. The issues involved in this writ petition are as under:-

(i) Whether the petitioner, who was working as Mining Sardar in the respondent-SECL, would fall within the definition of 'workman' as contemplated under Section 2(s) of the Act of 1947 on the basis of material produced before this Court.

(ii) Whether the Disciplinary Authority is justified in terminating the services of the petitioner without holding departmental enquiry in absence of enabling provision in Certified Standing Orders applicable to the respondents-SECL ?

9. In order to answer the first question, it would be appropriate to notice the provisions contained in Section 2(s) of the Act of 1947 which defines the workman as under:-

"2(s) "Workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of

employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged, or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person-

(i) who is subject to Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957; or

(ii) who is employed in the police service or as an officer or other capacity; or

(iii) who is employed mainly in a managerial or administrative capacity; or

(iv) who, being employed in a supervisory capacity, draws wages exceeding ten thousand rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature."

10. The ingredients of the definition of "workman" must be considered having regard to the following factors:

(i) Any person employed to do any skilled or unskilled work, but does not include any such person employed in any industry for hire or reward.

(ii) There must exist a relationship of employer and employee.

(iii) The persons inter alia excluded are those who are employed mainly in a managerial or administrative capacity.

11. The case of the petitioner is that he is not a "workman" within the meaning of Section 2(s) of the Act of 1947 and he falls within the exception carved out in clause (iii) & (iv) of Section 2(s) of the Act of 1947 as he was employed mainly in managerial / administrative capacity and drawing wages more than ten thousand rupees, whereas it is the case of the respondent-SECL that that the petitioner is "workman" within the meaning of Section 2(s) of the Act of 1947 and exception carved out in clause (iii) and (iv) of Section 2(s) of the Act of 1947 would not be applicable in case of the petitioner, therefore, the writ petition as framed and filed would not be maintainable and the petitioner be relegated to the remedy of raising industrial dispute before the Labour Court. This is the reason, why twice the Division Bench of this Court has remitted the matter to writ Court for deciding as to whether the petitioner is "workman" or not.

12. In order to decide the first issue that the petitioner is employed in the respondent-SECL as "workman" or not, it is not only the nature of duty performed by him, but also the terms of appointment and job performed by him are relevant

consideration. Supervision contemplates direction and control while determining the nature of work performed by the employee etc.,

13. At this stage, it would be appropriate to notice pertinent decisions on the point rendered by their Lordships of the Supreme Court in this regard.

14. First of all, in the matter of **Ananda Bazar Patrika (P) Ltd. v. The Workmen**³ the Supreme Court has held that whether a person is employed in a supervisory capacity or on clerical work depends upon whether the main and principal duties carried out by him are those of a supervisory character, or of a nature carried out by a clerk. It was observed as under:-

"3. The question, whether a person is employed in a supervisory capacity or on clerical work, in our opinion, depends upon whether the main and principal duties carried out by him are those of a supervisory character, or of a nature carried out by a clerk. If a person is mainly doing supervisory work, but, incidentally or for a fraction of the time, also does some clerical work, it would have to be held that he is employed in supervisory capacity; and, conversely, if the main work done is of clerical nature, the mere fact that some supervisory duties are also carried out, incidentally or as a small fraction of the work done by him will not convert his employment as a clerk into one in supervisory

³ 1970 (3) SCC 248

capacity. This principle finds support from the decisions of this Court in *South Indian Bank Ltd. v. A.R. Chacko*⁴ and *Management of M/s. May & Baker (India), Ltd. v. Their Workmen*⁵. In the present case, we have, therefore, to examine the evidence to see whether the Labour court is right, in holding that, because of the main work of Guptas being clerical in nature, he was not employed in supervisory capacity."

15. In the matter of **S.K.Verma v. Mahesh Chandra and another**⁶ the Supreme Court has held that in order to decide whether a person is workman within the meaning of Section 2(s) of the Act of 1947, designation or name of post is not decisive and held that definition of workman is designed to cover all manner of persons employed in an industry, irrespective of whether they are engaged in skilled work or unskilled work, manual work, supervisory work, technical work or clerical work as it take within its sweep entire "Labour Force" and exclude managerial force. Their Lordships, while holding the Development Officers of L.I.C. are 'workmen' under Section 2(s) of the Act of 1947 held as under:-

"9. A perusal of the above extracted terms and conditions of appointment shows that a development officer is to be a whole time employee of the Life Insurance Corporation of India, that his operations are to be

⁴ (1964) 5 SCR 625

⁵ AIR 1967 SC 678

⁶ (1983) 4 SCC 214

restricted to a defined area and that he is liable to be transferred. He has no authority whatsoever to bind the Corporation in any way. His principal duty appears to be to organise and develop the business of the Corporation in the area allotted to him and for that purpose to recruit active and reliable agents, to train them to canvass new business and to render post-sale services to policy-holders. He is expected to assist and inspire the agents. Even so he has not the authority to appoint agents or to take disciplinary action against them. He does not even supervise the work of the agents though he is required to train them and assist them. He is to be the 'friend, philosopher and guide' of the agents working within his jurisdiction and no more. He is expected to stimulate and excite the agents to work, while exercising no administrative control over them. The agents are not his subordinates. In fact, it is admitted that he has no subordinate staff working under him. It is thus clear that the development officer cannot by any stretch of imagination be said to be engaged in any administrative or managerial work. He is a workman within of Section 2(s) of the Industrial Disputes Act."

16. In the matter of S.K. Maini v. M/s Carona Sahu Company Limited and others⁷ the Supreme Court has held whether an employee is a workman under Section 2(s) of the ID Act is required to be determined with reference to his principal nature of duties and functions. It was observed as under:-

"9. It has been rightly contended by both the learned counsel that the designation of an employee is not of much importance and what is important is the nature of duties being performed by the employee. The determinative factor is the main duties of the employee concerned and not some works incidentally

⁷ (1994) 3 SCC 510

done. In other words, what is, in substance, the work which employee does or what in substance he is employed to do. Viewed from this angle, if the employee is mainly doing supervisory work but incidentally or for a fraction of time also does some manual or clerical work, the employee should be held to be doing supervisory works. Conversely, if the main work is of manual, clerical or of technical nature, the mere fact that some supervisory or other work is also done by the employee incidentally or only a small fraction of working time is devoted to some supervisory works, the employee will come within the purview of 'workman' as defined in Section 2(s) of the Industrial Disputes Act."

11. It may be noted in this connection that in view of the amendment of Section 2(s) enlarging the ambit of the classification of various types of workmen except managerial force, entire labour force has been included within the definition of workman under Section 2(s) as has been indicated by this Court in S.K. Verma v. Mahesh Chandra. But if the principal function is of supervisory nature, the employee concerned will not be workman only if he draws a particular quantum of salary at the relevant time as indicated in Section 2(s)....."

17. Similarly, in the matter of **Heavy Engineering Corporation Ltd. v. Presiding Officer, Labour Court and others**⁸ the Supreme Court has held that Respondent 2 therein (doctor having under him male nurse and other staff) held to be working in a supervisory capacity cannot be held to be a workman under Section 2(s) of the Act. It was observed as under:-

⁸ (1996) 11 SCC 236

"12. The aforesaid facts, in our opinion, clearly go to show that Respondent 2 could not be regarded as a workman under Section 2(s) of the Act as he was working in a supervisory capacity. While it is no doubt true that Respondent 2, along with the other doctors, used to work in shifts nevertheless during the time when he was in the shift he was the sole person in-charge of the first-aid post. He had, under him male nurse, nursing attendant, sweeper and ambulance driver who would naturally be taken directions and orders from the in-charge of the first-aid post. These persons obviously could not act on their own and had to function in the manner as directed by Respondent 2, whenever he was on duty. They were, in other words, under the control and supervision of the respondent. When a doctor, like the respondent, discharges his duties of attending to the patients and, in addition thereto supervises the work of the persons subordinate to him, the only possible conclusion which can be arrived at is that the respondent cannot be held to be regarded as a workman under Section 2(s) of the Act."

18. In the matter of Birla Corpn. Ltd. v. Rajeshwar

Mahato and others⁹ the Supreme Court has held as

under:-

"10. It is clear from a bare perusal of the said clause that if a person is employed mainly in a managerial or administrative capacity then under Sub-clause (iii) of Section 2(s) he would not be regarded as a workman. If an employee is working in a supervisory capacity then under Sub-clause (iv) he would not be a workman if his wages exceed Rs 1600/- per mensem. The said Sub-clause, inter alia, provides that if his functions are mainly of managerial nature, by reason of the powers vested in him, then such an employee would also not be regarded as a workman.

⁹ (2001) 10 SCC 611

11. As we have also noticed hereinabove, the Tribunal had given a categorical finding to the effect that Respondent No. 1's function was mainly of managerial nature. His duties were both supervisory and administrative and therefore he was regarded as not being a workman. Though the Tribunal did not specifically state so, it is evident that it is because of Section 2(s)(iii) that the Respondent 1 was regarded as not being a workman."

19. In the matter of Anand Regional Coop. Oil Seedsgrowers' Union Ltd. v. Shaileshkumar Harshadbhai Shah¹⁰ the Supreme Court while relying upon Ananda Bazar Patrika (P) Ltd. (supra) has held as under:-

"14. For determining the question as to whether a person employed in an industry is a workman or not; not only the nature of work performed by him but also terms of the appointment in the job performed are relevant considerations.

15. Supervision contemplates direction and control. While determining the nature of the work performed by an employee, the essence of the matter should call for consideration. An undue importance need not be given for the designation of an employee, or the name assigned to the class to which he belongs. What is needed to be asked is as to what are the primary duties he performs. For the said purpose, it is necessary to prove that there were some persons working under him whose work is required to be supervised. Being in charge of the section alone and that too it being a small one and relating to quality control would not answer the test."

20. From conspectus of the aforesaid judgments of the Supreme Courts noticed hereinabove (supra) and in

¹⁰ (2006) 6 SCC 548

view of definition contained in Section 2(s) of the Act of 1947, in order to determine whether an employee is "workman" or "supervisor", following factors would be relevant:-

(i) Mere designation of the post is not decisive of nature of employment.

(ii) An employee employed in capacity of supervisor discharging the duties of allocation of job, assessment of work, recommendation of leave, carried out promotional authorization, but incidentally discharging other technical work would not fall within the meaning of workman.

(iii) If a person is mainly doing supervisory work, but, incidentally or for a fraction of the time, also does some clerical work, it would have to be held that he is employed in supervisory capacity; and if the main work done is of clerical nature, the mere fact that some supervisory duties are also carried out incidentally or as a small fraction of the work done by him will not convert his employment as a clerk into one in supervisory capacity.

21. The question as to whether an employee working on particular capacity as workman or as supervisor or managerial or administrative capacity is a mixed question of fact and law, which has to be decided on the basis of oral/documentary evidence available on record. It is well settled principle of law that

he who asserts must prove. Burden of proof is the obligation to adduce evidence in support of claim assert. The obligation to lead evidence to establish a fact is on the party making the said fact or is relying on said fact.

22. In this case, it is the stand of the respondent-SECL that the petitioner is "workman" within the meaning of Section 2(s) of the Act of 1947 and therefore, the remedy is to raise industrial dispute against termination and this Court in first round of litigation has also held so, but the Division Bench of this Court has remitted the matter to decide as to whether the petitioner is "workman" and his remedy would lie under the provisions of the Act of 1947.

23. In order to establish the fact that the petitioner is "workman", pursuant to direction issued by this Court on 10.6.2021, the respondent-SECL has filed detailed affidavit on 17.6.2021 and has relied upon Regulation 44 of the Coal Mines Regulations, 1957, which prescribes the duties and responsibilities of Sardars issued under the provisions of the Section 57 of the Mines Act, 1952.

24. The Coal Mines Regulations, 1957 has been promulgated in exercise of power under Section 57 of the Mines Act, 1952. Section 44 prescribes the duties and responsibilities of Sirdars, which states as under:-

"44. Duties and responsibilities of Sirdars –
The Sirdar or other competent person appointed under regulation 113 shall strictly observe the following provisions, namely –

(1)(a) Subject to orders of superior officials, he shall have responsible charge and control of the district of the mine assigned to him by the manager or the under-manager or assistant manager.

(b) He shall take reasonable means to ensure the proper observance of the requirements of the Act and of the regulations, and orders made thereunder by persons under his charge and shall, as soon as practicable, report any contravention thereof to his superior official.

(2)(a) He shall make such inspection and reports as are required by these regulations, and in making such examination, he shall pay particular attention to edges of the goaf, if any, for checking supports and for presence of gas.

(b) Except in the case of a mine working in a continuous succession of shifts, he shall, on completion of the first inspection of the district, proceed to the station appointed under regulation 113 and instruct all persons as to their places of work and as to any special precautions necessary to be observed by them.

(c) If he finds any person in a place other than the one assigned to him, he may order such person out of the mine, and shall forthwith report the matter to his superior official.

(d) He shall ensure that no inexperienced person is employed on any work except under the supervision of an experienced person.

(3)(a) He shall see that the roof and sides of all travelling roadways to, and working places in, his district are made and kept secure.

(b) Where the height of any working place in the district in his charge measures from floor to roof exceeds three metres, he shall see that they are kept at convenient places in the district-

(i) a suitable wooden bunt or pole by which all parts of the roof may be effectively tested by a person standing on the floor. Except in a district to which regulation 144 applies, the bunt shall be shod with iron at one end; and

(ii) a ladder of suitable length.

(c) He shall report to his superior official any deficiency in timber, appliances and other necessities required for the safe working of the district.

(4) Where either of the two ways affording means of egress from the district to the surface is not ordinarily used for travelling, he shall travel, once at least in every seven days, the whole of such way in order to make himself thoroughly acquainted with the same.

(5) He shall see that no timber support is withdrawn except by means of a safety prop-withdrawer.

(6)(a) If he observes any dangerous place during the course of his inspections or if any danger at a place where workpersons are employed is reported to him, he shall, if the danger cannot be removed forthwith withdraw all persons from such place and shall not leave the place until the danger has been removed in his presence or all approaches to the place have been fenced off so as to prevent persons from inadvertently entering such place.

(b) He shall take care that any dangerous operation is carried out with due precaution, and in such cases shall be present throughout whenever any work of clearing falls of ground and setting of supports therein is being carried out.

(c) He shall cause the entrance to every place which is not in actual use or in course of working or extension, to be fenced across the whole width, so as to prevent persons from inadvertently entering such place.

(d) If he finds any accumulation of inflammable or noxious gases, he shall carry out the provisions of regulations 142 and shall not remove such accumulation until he has received instructions in that behalf from his superior official.

(7) He shall, on receipt of information of an accident to any person in his district, proceed at once to the place of accident, inspect the place and, if required, supervise the rescue operations, and shall report or send notice of the accident to the manager or undermanager or assistant manager.

(8)(a) He shall devote the whole of his time to his duties, and shall not leave the mine until the end of the shift or until relieved by a duly appointed substitute.

(b) If the mine is worked by a continuous succession of shifts, he shall, before leaving his district, confer with the sirdar or competent person succeeding him, and shall acquaint him with all matters requiring his personal attention and give him such other information as may be necessary for the safety of his district and of the persons employed therein."

25. At this stage, it would be appropriate to notice Regulation 113 which provides for examination by Mining Sirdar as under:-

"113. Examination by Sirdars - (1) Every place in a mine, whether belowground or in opencast working including travelling

roadways and landings, where work is carried on or where persons are stationed or required to pass shall be placed under the charge of a sirdar or other competent person.

(2) The mine or district assigned to a sirdar or other competent person shall not be of such a size, nor shall any additional duties other than his duties under the regulations be such, as to be likely to prevent him from carrying out in a thorough manner the duties prescribed for him under the regulations. If any doubt arises as to the foregoing, it shall be referred to the Chief Inspector for decision.

(3)(a) At the entrance to every mine or district, one or more stations shall be fixed by the manager; and except in the case of a mine working in a continuous succession of shifts no person other than the persons making the examination under clause (b) or an official shall pass beyond any such station until all the roadways and working places to which such persons are required to have access, have been examined by the competent person in charge of the mine or district and found to be satisfactorily ventilated and in safe condition. Every such station shall be legibly marked 'STATION' and shall be of such a size as to accommodate all the persons employed in the district in any one shift.

(b) The sirdar or other competent person accompanied by such assistants as may be required shall, within two hours before the connection of work in a shift, inspect every part of the mine or district assigned to him, in which persons have to work or pass during the shift and all roadways and working places where work is temporarily stopped and shall ascertain the condition thereof as regards ventilation, sanitation, the presence of gases, the state of the roof and sides, presence of spontaneous heating and other fire risks, and generally so far as the safety of the persons is concerned. Similar inspections shall be made once at least in every four hours during which the shift continues, of all the roadways and other working places to which persons engaged in

the mine or district are required to have access;

(c) The examination under clause (b) shall be made with an approved flame safety lamp and in case of a fiery seam also with a cage containing suitable birds or other means of detecting carbon monoxide gas approved by the Chief Inspector.

(d) The Sirdar or other competent person shall, at the completion of his shift, record without delay the result of his inspections in a bound paged book kept for the purpose. Every such report shall be a full and accurate report of the inspections and shall include the following.

(i) the details referred to in clause (b);

(ii) the number of persons working under his charge;

(iii) such instructions for the purposes of securing the safety of the persons as he may have given during his shift; and

(iv) the date and time of the inspections, the signature of the sirdar or other competent person, and the date and time when the report was written.

(4) In the case of a shaft in the course of being sunk, the competent person or chargeman shall —

(a) have entire charge of the shaft bottom and shall, in his shift, remain in the shaft while persons are at work at the bottom of the shaft. He shall be the last person to ascend the shaft at the end of the shift and if his shift is succeeded immediately by another shift, he shall not leave the bottom of the shaft until after the descent of the chargeman of the succeeding shaft; and

(b) after each round of shots, and at the beginning of every shift, and after every cessation of work in the shaft for a period exceeding two hours, shall examine the sides of the shaft and remove all loose pieces before persons are allowed to descend."

26. Reverting to the facts of the present case, following the principles of law laid down by their Lordships of the Supreme Court in above-stated judgments (supra) and parameters enunciated to find out whether a person employed would fall within the meaning of 'workman' defined in Section 2(s) of the Act of 1947, on a close scrutiny of nature of duties and responsibilities of the petitioner on the post of Mining Sardar, which he was required to perform on the said post, as reflected in Regulations 44 & 113 of the Regulation issued under the provisions of Section 57 of the Mines Act, 1952 would show that he shall subject to orders of superiors, he shall have responsible charge and control of the mine district assigned to him by his superior official, and he has to ensure the observance of the requirements of the Act/Regulations and orders made thereunder by persons under his charge and shall report any contravention thereof to his superior official, he has right to inspect and report and also right to instruct all persons as to their places of work and precautions necessary to be observed by them, he can order any person to go out of mine, he has a right to supervise the rescue operations in case of

accident or shall report of an accident to his manager or undermanager or assistant manager on completion of his shift. The above-stated duties noticed hereinabove would show that the duty and responsibility on the post of Mining Sardar is only & only supervisory and by no stretch of imagination it can be termed as clerical in nature and as such, Mining Sardar would not be “workman” within the meaning of Section 2(s) of the Act of 1947.

27. At this stage, it would be appropriate to consider the nomenclature, job description, categorical of Coal Employees which has been filed by the respondent-SECL as Annexure A-2 along with additional affidavit. Description of technical and supervisory staff has been given in Mining Department which states as under:-

II. Technical and Supervisory Staff

(A) Mining Department

1.	Head Overman of Sr. Overman or Overman Incharge	Tech. Grade-A
2.	Overman, Safety Assistant/Production Assistant/Stowing Incharge	Tech. Grade-B
3.	Mining Sirdar/Shot-firer (having Mining Sirdar Certificate, valid gas gesting and first-aid certificate	Tech. Grade-C
4.	Shot-firer not having Mining Sirdarship Certificate	Tech. Grade-D

28. A careful perusal of the said document would show that Mining Sardar is technical Grade-C Officer works under Overman / Safety Assistant. The respondent-SECL in its affidavit has quoted Regulation 44 extensively and has relied upon Regulation 44(1) that he will have the subject to control by the manager or the under-manager or assistant manager and therefore, Mining Sardars are "workman" within the meaning of Section 2(s) of the Act of 1947.

29. The above-stated submission deserves to be rejected as Mining Sardars are used to discharge the supervisory/managerial function. Merely because his work is subject to further supervision by the manager/undermanager/assistant Manager, their work cannot be taken from the purview of supervisory / managerial work, as such, the duties and responsibilities conferred to Mining Sardars cannot be held that his work is clerical in nature and therefore, he is workman. Similarly, the petitioner was appointed on the post of Mining Sardar with pay scale of Rs.1222 to 2230 in E.N.S. Grade of NCWA-IV with initial pay of Rs.122 and his services are governed by the NCWA and the certified standing order of the respondent-SECL, but the

petitioner was drawing salary at that time more than ten thousand rupees, which has been admitted by the respondent-SECL in para-16 of additional affidavit dated 17.6.2021, which clearly shows that the petitioner was drawing more than ten thousand rupees in terms of Section 2(s)(iv) of the Act of 1947. Similarly, the respondent-SECL has also taken a stand that in the respondent-SECL the employees are categorized in two groups, firstly, Executive Cadre being governed by Conduct Discipline and appeal Rules, 1978 and Non-Executive Cadre employees are governed by the Certified Standing Orders of of the SECL and since the petitioner is a workman, he would be governed by Certified Standing Orders and he would fall within the meaning of Section 2(s) of the Act of 1947.

30. Since the petitioner is not a workman and clearly falls outside the purview of Section 2(s) of the Act of 1947, it cannot be held that he is "workman" within the meaning of Section 2(s) of the Act of 1947 and his remedy would under the provisions of the Act of 1947 to question the order of dismissal.

Answer to Issue No.2:-

31. The question for consideration would be whether the respondent-SECL is justified in dispensing with the services of the petitioner holding that it is impracticable to hold enquiry against him in absence of any provision in the applicable Standing Orders.
32. The applicable Standing Orders in respect of SECL has been filed as Annexure P/12 along with the writ petition. A careful perusal of the Certified Standing Orders would show that paragraph 28 of the Standing Orders provides for procedure for imposition of penalties.
33. A careful perusal of paragraph 28.1 to 28.10 of the Standing Orders would show that there is no provision which empowers the Disciplinary Authority to dispense with the services of any employee like the petitioner (Mining Sardar) without holding any departmental enquiry as provided in clause (b) of second proviso to Article 311(2) of the Constitution of India which provides that where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for reason, to be recorded by that authority in writing, it is not reasonably practicable to hold

such inquiry. In absence of any enabling provision in the Standing Orders applicable to the SECL, the Disciplinary Authority is absolutely unjustified in terminating the services of the petitioner without following the procedure laid down in paragraph 28.1 to 28.10 of the Standing Orders and the Appellate Authority has also perpetuated illegality in affirming the order of the Disciplinary Authority without noticing serious legal infirmity in the disciplinary action, as such, the order of the Appellate Authority affirming the order of the Disciplinary Authority is liable to be set aside.

34. Accordingly, the impugned order dated 18/2/2008 (Annexure P-1) and the appellate order dated 6/6/2008 (Annexure P-2) both are hereby quashed. The respondent-SECL is directed to reinstate the petitioner in service forthwith with all consequential benefits except back-wages. The question of back-wages will be considered by the competent authority in accordance with Rules /Regulations/Standing Orders within 45 days. However, it is made clear that this order shall not preclude the competent authority for taking action against the petitioner in accordance with law. At the same time, I deem it necessary to observe that

liberty given by this Court shall not be construed as a mandate for initiation of disciplinary proceeding against the petitioner and the competent authority shall take appropriate decision after objectively considering the entire record.

35. The writ petition is allowed to the extent indicated hereinabove. No order as to cost(s).

Sd/-

(Sanjay K.Agrawal)
Judge

B/-