

CASE NO.:
Appeal (civil) 1532 of 2005

PETITIONER:
S.C.Chandra & Ors

RESPONDENT:
State of Jharkhand & Ors

DATE OF JUDGMENT: 21/08/2007

BENCH:
A.K.MATHUR & MARKANDEY KATJU

JUDGMENT:
J U D G M E N T

A.K.MATHUR, J.

CIVIL APPEAL NO. 1532 OF 2005
With :

C.A.No.6595 of 2005, C.A. Nos.6602-6603 of 2005 &
C.A.No.6601 of 2005.

C.A. NO.1532 OF 2005.

1. This appeal is directed against the order dated 4.3.2004 passed by learned Single Judge of High Court of Jharkhand at Ranchi in Writ Petition No.3666 of 2001 whereby the learned Single Judge dismissed the writ petition following the decision given by the Division Bench of the Jharkhand High Court in Chatradhar Mahto & Ors. V. State of Jharkhand & Ors.

2. Brief facts which are necessary for disposal of this appeal are that the writ petitioners- appellant filed a writ petition in the High Court of Jharkhand seeking a writ of mandamus against respondent Nos.3 to 6 to release and pay D.A. with arrears along with interest and further a direction was sought to be issued to respondent Nos.3 to 6 not to close the school or in the alternative a direction was sought to be issued to respondent Nos.1 & 2 to take over the management and control of the school in question. All the writ petitioners claimed themselves as teachers and non-teaching staff of the School and claimed themselves to be the employees of the Hindustan Copper Limited (hereinafter to be referred to as 'HCL'). It was alleged that in the year 1933 Indian Copper Corporation, a private sector unit, registered in the United Kingdom started a Lower Primary School at Moubhandar for the children of its employees which was named as Moubhandar Lower Primary School. In the year 1944-45, the school was upgraded to Upper Primary School i.e. upto Class V. In 1958-59 the School was upgraded to a Middle School and recognition to Middle School was accorded by the then District Superintendent of Education, Chaibasa. Thereafter on 21.9.1972 the Indian Copper Corporation (Acquisition of Undertaking) Act, 1972 was notified and the Indian Copper Corporation was taken over by the Central Government and it became a part of HCL, a Government of India enterprise. It was alleged that thereafter the School was sought to be taken over by the State Government but this was resisted by the Managing Committee of the School. It was alleged that the management of HCL was running two schools, one at Mosabani and another at Moubhandar as proprietary schools and they were managed by the Managing Committee. The present school was getting the financial assistance from the management of the HCL. The Bihar Non-Government Secondary Schools (Taking

over of Management and Control) Act, 1981 (hereinafter to be referred to as the 'Act') was passed. Section 19 of the Act laid down certain conditions for grant of recognition to such proprietary schools run through the Managing Committee and therefore, it was contended that the school was run by the Managing Committee and the service conditions of staff of the school were approved by the Executive Director and thereafter request was made by the HCL to the Education Commission for grant of recognition as a High School. The school was recognized by the State Government under the provisions of the Act of 1981. It was alleged that the Managing Committee of the School was constituted and reconstituted by the Management of the HCL. Thereafter 10+ 2 stream was introduced in the said School and a request was made by the President of the School to the Director, Bihar Secondary Education seeking permission to upgrade the ICC High School, Moubhandar to +2 stage and the same was recognized by the Government of Bihar. However, in the meanwhile because of critical financial situation the managing committee of the school requested the management of the HCL to approach the State Government for taking over of the school at the earliest. The school was not taken over under the Act of 1981 by the newly formed State of Jharkhand. Since the management of HCL was closed on account of financial stress, therefore, no financial aid could be extended to the school and the writ petitioners could not get their salaries as the financial aid was not coming from the management of the HCL and therefore, they approached the High Court of Jharkhand for issuance of writ of mandamus against respondent nos. 3 to 6 to release pay and arrears along with dearness allowance and they also sought a further direction not to close down the school and in the alternative a direction was also sought to be issued against respondent nos. 1 & 2 to take over the management of the school.

3. A reply was filed by the Management of HCL. It took the stand that there was no relationship of employer and employee between the management of HCL and the school and it was stated that the company was merely providing grant for imparting education and the school was run by the Managing Committee. It was also contended that the school was not the liability of the management of the HCL. The school was being managed by the Managing Committee and only financial aid was provided by the management of HCL from time to time but since the management of HCL was in financial doldrums it was unable to manage the school. However, it was categorically stated that there was no relationship of employer and employee between the management of HCL and the staff of the school.

4. Learned Single Judge after considering the matter in number of petitions, came to the conclusion that the school was not the dominant object of the HCL and it found that there was no relationship of employer and employee between the Management of HCL and the teachers and other staff of the School. Therefore, no direction was given and the writ petition was dismissed by the learned Single Judge relying on the aforesaid judgment in the case of Chatradhar Mahto & Ors. V. State of Jharkhand & Ors.. Hence the writ petitioner- appellants approached this Court by filing the special leave petition against the order of learned Single Judge dated 4.3.2004.

5. We have heard learned counsel for the parties and perused the records. The basic question before us is whether a writ of mandamus could be issued against the management of HCL. Learned Single Judge relying on the Division Bench in an identical matter pertaining to Bharat Coking Coal Limited dismissed the writ petition of the appellants. This issue was examined in an analogous writ petition and in the aforesaid case, this issue was extensively considered as to whether the management of the school is the direct

responsibility of the HCL or not. After considering the matter in detail, learned Single Judge relying on the aforesaid judgment found that there is no relationship of master and servant with that of the teachers and other staff of the school with the HCL as the management of the school was done by the Managing Committee through liberal financial grant was being made by the Corporation. By that there was no direct connection of the management of the HCL with that of the management of the school. Though through various communication an impression was sought to be given that the school is being run by the HCL but in substance the HCL only used to provide financial assistance to the school but the management of the school was entirely different than the management of the HCL. Giving financial assistance does not necessarily mean that all the teachers and staff who are working in the school have become the employees of the HCL. Therefore, we are of the view that the view taken by learned Single Judge appears to be correct that there was no relationship of the management of the HCL with that of the management of the school though most of the employees of the HCL were in the managing committee of the school. But by that no inference can be drawn that the school had been established by the HCL. The children of workers of HCL were being benefited by the education imparted by this school. Therefore, the management of HCL was giving financial aid but by that it cannot be construed that the school was run by the management of HCL. Therefore, under these circumstances, we are of opinion that the view taken by the learned Single Judge appears to be correct.

6. Next, it was contended that even if the school is not a part of the management of the HCL, yet a direction could be given to the State of Jharkhand under the Act of 1981 to take over the management of the school and in that connection our attention was invited to the definition of proprietary school as defined in Section 2(d) of the Act which reads as under :

" (d) "Proprietary secondary school" means such secondary school whose entire financial liability is borne out by (any Registered Trust, Association or corporate body, individuals or a group of individuals) and which according to such conditions and registrations laid down from time to time by the State Government, may be declared by it proprietary secondary school."

Section 3 laid down taking over control and management of non-government secondary schools by State Government. Section 19 laid down that proprietary secondary school can be established. Section 19 only says that if any registered Trust (Association, Corporate Body, individual or group of individuals) applies for setting up a secondary school and promises in writing to bear the entire financial burden of the school, the State Government shall have the power to permit establishment of such school after fulfillment of the prescribed conditions for recognition under section 19. By this it does not mean that writ of mandamus can be issued to the State Government for taking over the management of the school. 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. 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 paragraph 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 concerned authorities 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. 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.

7. In this view of the matter, we are of opinion that the view taken by learned Single Judge of the High Court of Jharkhand appears to be correct and there is no ground to interfere with the impugned order. Consequently, the Civil Appeal is dismissed with no order as to costs.

C.A.No.6595 , C.A.Nos. 6602-6603 and C.A.No.6601 of 2005.

8. All these appeals involve common question of law, therefore, they are disposed of by this common judgment. For the sake of convenient disposal of these appeals, the facts stated in C.A.No.6595 of 2005 are taken into consideration.

9. The writ petitioner-appellants prayed before the High Court of Jharkhand by filing writ petition that direction and order may be given to the respondents to fix their pay scale at par with the pay scale of Government Secondary School teachers or at par with Grade I and II Clerks of the respondent-company. They also prayed that the facilities such as, provident fund, gratuity, pension and other retrieval benefits should also be made available to them and it was further prayed that the State Government should take over the management of Ram Kanali School under the provisions of the Bihar Non-Government Secondary Schools (Taking over of Management and Control) Act, 1981 (hereinafter to be referred to as the 'Act'). A counter affidavit was filed by the Bharat Coking Coal Limited (hereinafter to be referred to as BCCL) that the present Ram Kanali School was not owned by the said BCCL and the school was run by the Managing Committee and the writ petitioners were never appointed by the BCCL and therefore, they were not the employees of BCCL. It was also submitted that BCCL used to release non-recurring grants to the privately managed schools on the recommendation of the Welfare Committee. But this release of grant was subject to certain conditions. This non-recurring grant-in-aid did not make the school a part of the management of BCCL and therefore any teacher in such privately managed school cannot be said to be the employee of BCCL thereby entitling him all benefits as are available to the regular employees of BCCL. It was also pointed out that the managing committee of Ram Kalai school was given grant-in-aid but that has been stopped and they totally disowned the responsibilities for any benefits whatsoever. However, learned Single Judge allowed the writ petition and directed that these teachers who

were working in the school were entitled to the pay scale given to the clerks working in BCCL with effect from the date of the judgment with all consequential benefits such as provident fund, gratuity and other service benefits available to the employees of BCCL. So far as taking over of the school by the State of Jharkhand was concerned, no direction was given by learned Single Judge. Aggrieved against this order passed by the learned Single Judge, appeal was prepared and along with this appeal two more appeals were filed by the BCCL before the Division Bench. Therefore, all these three appeals were taken up by the Division Bench together and the same were disposed of by the common order. The Division Bench examined the matter at a greater detail and came to the conclusion that the incumbents were not entitled to the pay scale of the employees of BCCL or equivalent to the Government employees and accordingly set aside the order of learned Single Judge by order dated 21.1.2004. Hence, aggrieved against this order, all these three appeals have been preferred by the private respondents.

10. We have heard learned counsel for the parties and perused the records. The Division Bench after considering the matter came to the conclusion that from the record available the existence of relationship of employer and employee between the management of BCCL and the teachers working the school could not be established. The Division Bench further held that BCCL is not an instrumentality of the State as per section 617 of the Companies Act as its dominant function is to raise coal and sell and imparting education is not its dominant function. The Division Bench further held that the plea that a direction may be issued to the State Government in terms of the Act to take over the school in question was totally misconceived. As such, the Division Bench set aside the order of learned Single Judge and dismissed the writ petitions.

11. After going through the order of the Division Bench we are of opinion that the view taken by the Division Bench of the High Court is correct. Firstly, the school is not being managed by the BCCL as from the facts it is more than clear that the BCCL was only extending financial assistance from time to time. By that it cannot be saddled with the liability to pay these teachers of the school as being paid to the clerks working with BCCL or in the Government of Jharkhand. It is essentially a school managed by a body independent of the management of BCCL. Therefore, BCCL cannot be saddled with the responsibilities of granting the teachers the salaries equated to that of the clerks working in BCCL.

12. Learned counsel for the appellants have relied on Article 39 (d) of the Constitution. Article 39 (d) does not mean that all the teachers working in the school should be equated with the clerks in the BCCL or Government of Jharkhand. For application of the principle of equal pay for equal work. There should be total identity between both groups i.e. the teachers of the school on the one hand and the clerks in BCCL, and as such the teachers cannot be equated with the clerks of the State Government or of the BCCL. The question of application of Article 39(d) of the Constitution has recently been interpreted by this Court in *State of Haryana & Ors. V. Charanjit Singh & Ors.* [(2006) 9 SCC 321] wherein their Lordships have put the entire controversy to rest and held that the principle, 'equal pay for equal work' must satisfy the test that the incumbents are performing equal and identical work as discharged by employees against whom the equal pay is claimed. Their Lordships have reviewed all the cases bearing on the subject and after a detailed discussion have finally put the controversy to rest that the persons who claimed the parity should satisfy the court that the conditions are identical and equal and same duties are being discharged by them. Though a number of cases were cited for our consideration but no useful purpose will be served as in *Charanjit Singh (supra)* all these cases have been reviewed by this Court. More so, when we have already held that the appellants are not the employees of BCCL,

there is no question seeking any parity of the pay with that of the clerks of BCCL.

13. Hence, as a result of our above discussion, we do not find any merit in these appeals and the same are dismissed with no order as to costs.

JUDIS