
(2008) 07 JH CK 0087
In the Jharkhand High Court

Biplava Prasad Singh

APPELLANT

Vs

Hindustan Copper Limited and Others

RESPONDENT

Date of Decision : 02-07-2008

Acts Referred:

Industrial Disputes Act, 1947 — Section 25F

Citation : (2008) 3 JCR 585

Hon'ble Judges : R.K. Merathia, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

R.K. Merathia, J.—Heard the parties at length.

2. Both the connected cases are being disposed of by this common order.

W.P.S. No. 5918 of 2003

3. This writ petition has been filed for a direction upon the respondents to pay the arrears of salary with effect from September, 2002; arrears on account of dearness allowance (DA) along with interest from January, 1998; the salary at par with the State Government teachers etc.

Contempt (Civil) Case No. 250 of 2004

4. This contempt case has been filed alleging violation of the following interim order passed in the said writ petition on 5.12.2003.

Mr. S.L. Agarwal learned Counsel appearing for the respondent prays for time to seek instruction and file counter affidavit. Put up this case after six weeks.

In the meantime, if the respondents are taking work from the petitioner, he should be paid his salary.

5. Common arguments were advanced in the writ petition and the contempt petition as follows.

6. Mr. Jha, learned senior Counsel appearing on behalf of the petitioner, submitted that petitioner's case is not covered by the judgments of this Court and the Supreme Court as neither the petitioner has been retrenched nor any order for closure of the Surda Mines school has been passed so far; and therefore petitioner is entitled to salary upto date.

He further submitted that the Surda Mines Middle School is still running as usual and petitioner is working as teacher but the respondents have violated the said interim order. The LPA against the said interim order was dismissed as not maintainable. He also referred to other interim orders passed in this Contempt Case. He relied on certain documents of 2003-2004-2005 to show that the Block Development Officer granted scholarship to S.C., S.T. and backward students; the notice of superannuation of a headmaster; release of salary for July and August, 2002; the office order giving additional assignment to look after the affairs as Secretary of the said School; the letter written to the Ministry of Coal & Mines to expedite the matter so that the schools are closed and huge expenses on litigation is saved; letter showing settlement of payment to one ex-principle on compassionate ground; a certificate issued by the Headmaster of Musabani Mines High School to show that the students of Surda Mines High School were allowed to fill up their examination application form in order to appear in the Jharkhand Secondary School Examination; letters reconstituting the Managing Committees; some attendance sheets; recommendations of the Head Master for annual increments. Referring to the copy of the journal of respondent-Hindustan Copper Limited (HCL for short), he submitted that from 2004-05 onwards, the Company earned profit after eight years.

7. Mr. P.K. Sinha, learned senior Counsel appearing for the respondents-HCL submitted that this case is fully covered by the judgment of this Court dated 9.9.2003, reported in 2003 (4) JLJR 317 - Chatradhar Mahto; and the judgment dated 4.3.2004, passed in Writ Petition (S) No. 3666/2001 - S.C. Chandra and Ors., which has been affirmed by the Supreme Court in S.C. Chandra and Others Vs. State of Jharkhand and Others, He further submitted that the said documents relied by the petitioner are not at all relevant for the purpose of decision of this case. Some of them have been fabricated. He also submitted that HCL is having several mines in different parts of the country and some profit some where cannot be a ground for issuing the directions sought for in this writ petition. He submitted that in view of the interim order dated 3.9.2002, passed in W.P.S. No. 2070/2002 Krit Narayan Choudhary and Ors. and two other writ petitions, H.C.L. has not been able to close the gates of the schools and pay salary to the teachers and staffs. Subsequent to the said order, the said judgment was passed on 9.9.2003 in the case of Chatradhar Mahto (supra) the said cases of Krit Narayan Choudhary and Ors. are still pending in this Court in spite of efforts of HCL for taking up the said cases for hearing as they are also now fully covered by the said judgments of this Court and the Supreme Court.

He further submitted that as a welfare measure, HCL patronized the schools

managed by the Managing Committees, which were independent bodies, though some of the officers of HCL were part of the Managing Committee. HCL was incurring heavy losses. Ultimately, in view of the report of Chellaiya Committee, the Government permitted the Company to close the mines. HCL took a policy decision to discontinue the financial aid/grant to all the Committee Managed Schools including the school in question and issued instructions on 16/30, July, 2001 that in view of the precarious financial condition of the Company, it is no longer possible to grant aid to the Committees. Accordingly, notices were given to the teaching, non-teaching staffs, parents and students of the schools by displaying in the notice boards that the schools will be closed on completion of the session i.e. 31st December, 2001 and the formalities in that regard shall be completed. But some of the teaching and non-teaching staffs on their own volition and forcefully continued coming to the Schools under a false hope that they would get salary though it was made clear that the Company is not in a position to give any aid to the Committee Managed Schools. As the academic sessions changed from April to March, in order to avoid difficulties to the students, HCL continued aid till 31.3.2002 and sufficient notice was given to that effect. Thereafter, no work has been taken from the petitioner. It has already been held in the said judgments that the teaching and non-teaching staffs were not employed by HCL and there was no relationship of employer and employee between them; and that the primary and dominant object of the HCL was Copper Mining and not running the schools. He lastly submitted that HCL has not violated the interim order dated 5.12.2003.

8. It may be noted here that an interlocutory application being I.A. No. 619 of 2007 was filed by the following teachers namely (1) Anil Baran Giri, (2) Ganesh Choudhaiy (3) Valeria Tirkey, (4) Gita Rani Dhar, (5) Pankaj Jimar Mishra and (6) Baliram Pandey of Surda Mines Middle School, with a prayer to allow them to intervene on the ground that their case is similar to the writ petitioner, but the said petition has not been pressed. I.A. No. 268 of 2005 is also disposed of, with liberty to the respondents to move Hon"ble the Chief Justice.

9. The basic question is whether this matter is covered by the earlier judgments or not.

In my opinion, this writ petition is squarely covered by the said judgments of this Court and Supreme Court.

The complain of the petitioner that no notice was served on him for dispensing with his services and that there was no notice for closure of, the Surda Middle School, is mischievous and cannot be accepted. In paragraph 8 of the Contempt Case, petitioner himself said as follows:

That the petitioner received a memo No. S.M.H.S. Secretary/1/03 dated 29.12.2003 under the signature of Secretary, Surda Mines High School by which the School Managing Committee informed that due to acute financial crunch, the Managing Committee had taken decision on 31.7.2001 to close the School with

effect from 31.12.2001.

It is also to be noted that the aforesaid statements of HCL that sufficient notice was given to close the schools and for dispensing with the services of the teachers with regard to all the schools including Surda Middle School has not been denied and disputed by the petitioner. Moreover, in view of the said interim order dated 3.9.2002, passed in the case of Krit Naravan Choudhary and Ors., the HCL could not put the shutters of the schools down.

In the case of Chatradhar Mahto, it was inter alia held that the teachers not being workmen cannot complain violation of Section 25F of the Industrial Disputes Act; and that the decision to dispense with the services of the teachers was neither mala fide nor invalid; and that there was no employer and employee relationship between HCL and the teachers. In W.P.S. No. 3666/2001 - S.C. Chandra (supra) this Court followed the judgment of Chatradhar Mahto (supra) and certain further grounds raised by the teachers-petitioners therein were again considered. Paragraph 4 and 5 of the said judgment reads as follows:

4. After hearing the parties, it is clear that stand of the Company is correct. The Company was patronizing and funding the schools. The schools were run by Managing Committees which included the officers of the Company. The Company and the Managing Committees were distinct bodies. The Company constituted/reconstituted the Managing Committee of the schools and made certain correspondences regarding the affairs of the schools. Some times, the letter heads of the Company were used. There is nothing to show that the Company was under any legal obligation to run the schools.

It was never the case of the teachers and other employees of the schools that they were the employees of the Company. Only when the Company had closed its mines and the schools, this claim is raised that they are in fact the employees of the Company.

5. In the case of Chatradhar Mahto, (supra) teachers of the schools challenged the orders relieving them from service. They prayed that the Company should allow them to continue or in the alternative adjust in alternative post or give them benefit of V.R.S. treating them to be the employees of the Company. In substance, the prayer was similar that they should be treated as employees of the Company. This Court held in paragraph 30 that the dominant object of the Company was copper mining. Running of schools was neither the dominant object of the Company nor it was incidental or ancillary to the main object of mining. The Company cannot be forced to run the schools in perpetuity. The Court cannot issue a writ of mandamus enforcing the Company to continue with the schools. The decision of the Company to close the schools was neither mala fide nor invalid. This Court further held that in paragraph 33 of the said judgment that the teachers and the employees of the schools cannot be deemed to be the employees of the Company; and that they are not entitled to the benefits of V.R.S....

10. Against the said judgment, the teachers-petitioners therein, moved Hon''ble the Supreme Court but the said judgment of this Court was affirmed in S.C. Chandra and Others Vs. State of Jharkhand and Others, . From paragraph 2 of the said judgment, it will appear that the prayer in the present writ petition was similar.

Paragraphs 2 of the judgment reads as follows:

2 Brief facts which are necessary for disposal of this appeal are that the writ petitioner-appellants filed a writ petition in the High Court of Jharkhand seeking a writ of mandamus against Respondents 3 to 6 to release and pay DA with arrears along with interest and further a direction was sought to be issued to Respondents 3 to 6 not to close the school or in the alternative a direction was sought to be issued to Respondents 1 and 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 Hindustan Copper Limited (hereinafter to be referred to as "HCL").

Then paragraph 8 reads as follows:

8 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. The learned Single Judge relying on the Division Bench in an identical matter pertaining to Dharat 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 HCL or not. After considering the matter in detail, the 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 HCL as the management of the school was done by the Managing Committee though liberal financial grant was being made by the Corporation. By that there was no direct connection of the management of 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 HCL but in substance HCL only used to provide financial assistance to the school but the management of the school was entirely different than the management of 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 HCL. Therefore, we are of the view that the view taken by the learned Single Judge appears to be correct that there was no relationship of the management of HCL with that of the management of the school though most of the employees of HCL were in the Managing Committee of the school. But by that no inference can be drawn that the school had been established by 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.

11. Thus, it is held that this writ petition is squarely covered by the said judgments of this Court in the case of Chatradhar Mahto (supra) and S.C. Chandra (supra), affirmed by the Supreme Court in the case of S.C. Chandra (supra) and therefore it has to be dismissed. The claim of Parity of Pay was also negatived in the said judgments. It is not necessary to repeat the reasonings and findings recorded in the said judgments.

12. Now the next question is whether the respondents have disobeyed the aforesaid interim order dated 5.12.2003, passed in the writ petition?. It appears that on the first day when the case was taken up, learned Counsel appearing for the respondents prayed for time to seek instruction and file counter affidavit. At that stage, this Court observed that in the meantime "if the respondents are taking work from the petitioner, he should be paid his salary. According to the petitioner, he has been working, whereas according to the respondents, they are not taking any work from the petitioner after March, 2002. The documents relied by the petitioner do not prove that the respondents are taking work from the petitioner. In view of the interim order dated 3.9.2002, passed in the cases of Krit Narayan Choudharv and Ors. (supra), the respondents could not put the shutters of the school in question down. But it is clear that all the schools were closed after due notice to all concerned including the petitioner. It may also be noted that the case of Chatradhar Mahto (supra) was decided, on 9.9.2003 holding that there was no employer-employee relationship between the teachers and HCL; and that HCL was not bound to run schools and that the decision to dispense with the services of the teachers was neither mala fide nor invalid; but it appears that it could not be brought to the notice of this Court when this writ petition was taken up for the first time on 5.12.2003. Moreover, the interim order dated 5.12.2003 was a conditional order that "if" the respondents are taking work from the petitioner, he should be paid his salary. As already noticed, the respondents have specifically said that they are not taking work from the petitioner, and that some of the teaching and non-teaching staffs of the school have been coming to the schools of their own.

13. In any event, on the basis of such disputed facts, the respondents cannot be held liable for contempt. In the circumstances, noticed above, it cannot be held that respondents have violated the interim order dated 5.12.2003.

14. In the result, this writ petition and the contempt petition, both are dismissed. However, no costs.