(2003) 09 JH CK 0113

In the Jharkhand High Court

Case No : Writ Petition (S) No''s. 2459, 2806, 2973, 3016 and 4453 of 2001 and WP (C) No''s. 4391 and 4645 of 2001

Chatradhar Mahto and Others APPELLANT

Vs

State of Jharkhand and Others RESPONDENT

Date of Decision : 09-09-2003

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 25F

Citation : (2003) 4 JCR 420

Hon'ble Judges : Tapen Sen, J

Bench : Single Bench

Advocate : M.M. Pal, in WPS Nos. 2459, 2806, 2973 and 4453 of 2001, Rajendra Krishna, in WPS No. 3016 of 2001 and A.K. Sahani, in WPC Nos. 4392 and 4645 of 2001, for the Appellant; P.K. Sinha Pandey Neeraj Rai, B.S. Lall, Addl. A.G. and R. Mukhopadhyay, for the Respondent

Judgement

Tapen Sen, J.—The description of the respondents given in this judgment have been taken in exactly the same manner in which they have been described in the Cause Titles of the respective cases.

2. WP (S) Nos. 2459 of 2001, 2808 of 2001, 2973 of 2001, 3016 of 2001 and 4453 of 2001 pertain to the teachers whereas WP (C) Nos. 4392 and 4645 of 2001 relate to the parents/guardians.

3. Save and except WP (C) Nos. 4392 and 4645 of 2001, petitioners of the remaining five cases and who are all teacher-petitioners have prayed for quashing the orders dated 30.5.2001 (which has been brought on record through different annexures such a Annexures 11, 10 series, 7 series, 17 and 17/A and Annexure 3 respectively) passed by the Chairman, ICC Managed Schools. Mosabani Mines Middle School, Mosabani, whereby and whereunder the teachers have been informed that certain posts were found to be redundant and keeping in view the present financial conditions, it had been decided to abolish the posts

held by the petitioners with effect from 1.6.2001. They were further informed that they would stand released from their service with effect from the said date. Along with the said letter, a cheque equivalent to one month''s salary in lieu of notice was enclosed.

4. The petitioner have further prayed that the respondents be directed not to give effect to the aforementioned order and to allow them to Continue in their services. They have also prayed that the State-respondents/State of Jharkhand be directed to take over the School in question if the management of the HCL/ ICC is not in a position to run the same.

5. They have also prayed that the respondent-Company be directed to give them benefits under the voluntary retirement scheme, treating them to be their employees.

6. In the other two cases, namely WP (C) No. 4392 and 4645 of 2001, the petitioners are the guardians/parent of their respective wards and have filed the two Writ Application praying for quashing of the letter dated 16.7.2001 issued by the Executive Director (Personnel), Hindustan Copper Complex, whereby and whereunder it was informed that in view of the precarious financial position of the company, it was no longer possible to give grants for running the Committee Managed Schools at Indian Copper Complex, Moubhandar at Ghatshila and therefore, it had been decided that a notice be given to the parents of all the students of the Committee Managed Schools at Moubhandar, Mosabani and Surda as also to the Teaching and Non-Teaching Staff working in those Schools to the effect that the said institutions shall be closed from 31.12.2001.

7. The subject-matter of the grievances of the guardians involved in the two cases mentioned above shall be dealt with later on.

8. However, the grievances of the other cases relating to the teacher-petitioners are being taken up first.

9. All the parties have stated and submitted that the facts and the pleadings of WP (S) No. 2459 of 2001 would be sufficient for purposes of deciding all the cases. All the parties further agreed to make their submissions on the basis of the pleading made in WP (S) No. 2459 of 2001 because what has been stated in that case is substantially the same in all the other cases and the orders impugned are also the same in the remaining cases. Accordingly, and on the basis of the pleadings made in WP (S) No. 2459 of 2001, the same are being taken up for consideration of all the cases relating to the teacher-petitioners.

10. All the teacher-petitioners have stated that the Schools in question were established long long time ago. They have further stated that all the schools are managed by the ICC Committee and by virtue of acquisition of ICC by an Act of Parliament and vesting it upon the Hindustan Copper Limited, the aforesaid schools were established for purposes of catering to the needs of the wards of the HCL employees. Although they have been teaching in the said schools since

very long, the Management, all of a sudden decided to abolish the posts and to release them from their services vide letter/order dated 30.5.2001. According to the teacher-petitioners, their services were duly approved by the District Superintendent of Education, Singhbhum and they are fully eligible and qualified to teach and were accordingly selected. Their appointments were made in a regular manner and also received recognition from the State of Bihar. Their service conditions are governed by the rules and procedures laid down by the State Government from time to time and all of them are being paid Government scales, increments, promotions and have been given other service benefits just like other Government employees. The learned counsels for the teacher-petitioners have submitted that the stand of the Management in issuing the impugned order/letter dated 30.5.2001 in the name of surpluses is totally mala fide and illegal. It is their argument that if the impugned orders are given effect to, it will not only render them jobless, but would also have the effect of adversely affecting the career of thousand of students, which in turn, would be totally contrary and against the interest of future generations of the country. The learned counsels have submitted that all along, the attitude of the management was not bona fide. In that context, they have referred to a letter dated February 1973 issued from the Deputy Inspector of Schools and addressed to the General Manager, Hindustan Copper Limited wherein it was stated that all the primary schools of the State had been nationalized with effect from 1.1.1971 and the teachers of those schools had been treated as Government Servants. The General Manager was reminded that the Schools of the Management had also been asked to submit their decision in relation to handing over the schools to the Government, but such decision had not been taken. It was further informed that the school is a Managing Committee run School and a majority of the teachers are Committee members and as per Government Orders, the teachers should get their pay as per the recommendations of the Pay Revision Committee, but in view of the non-cooperation of the Management, the teachers were deprived of these benefits. Accordingly, they were asked to state as to whether these Schools would be under the direct control of the Management or not. If they were prepared to hand over the same to the Government, then they should send necessary information without any further delay. A similar letter was again sent by the Deputy Inspector of Schools, Ghatshila to the Deputy General Manager on 11.4.1973. In that letter, while deprecating the action of the Management in not having handed over the Schools to the Government since it was against the directions of the Government, a suggestion was given that the only alternative was that the Schools should be given all facilities which are given to other employees of the Government. Thereafter on 8.10.1973, a letter was sent purportedly from the Officer of the Mines Superintendent wherein, while forwarding a joint petition of the teachers expressing their intention to go on strike with effect from 15.10.1973, the General Manager was informed that the demand of the teachers was that either the Schools be handed over to the Government under their control or the teachers be treated as employees of the Company: In the penultimate paragraph, attention of the General Manager was drawn to the effect that the Management had already taken a decision on 26.3.1973 that the School will not be handed over to the Government of Bihar, but will continue to be run by the Managing Committee.

11. In that view of the matter, the learned counsels for the teacher-petitioners submitted that the Management, right from the beginning, attempted to create an impasse in relation to the legitimate rights of the teachers and became a barrier for them to attain the status of either Government Employees or of Management Employees. The petitioners have further stated that having come to learn about the intention of the Management to close down the schools, they filed representations after representations requesting the management that in the case the management is derious of closing down the institutions then they should hand over the School to the Department of Education of the State Government. The teacher-petitioners have further stated that therefore the action of the Management in refusing to hand over the schools to the Government on the one hand and issuing orders of termination on the other hand is not only illegal, but amounts to colourable exercise of powers. They have further stated that they have not been paid revised pay scale with effect from 01.01.1996 and other amounts which are due to be paid to them. The petitioners have alleged mala fide on the part of the Management inasmuch as they have stated that nothing was let known to them and it was only when they were out of station during summer holidays between 21.5.2001 and 23.6.2001, that the impugned order/letters dated 30.5.2001 were issued and sent by registered post terminating their services.

12. They have also alleged violation of the provisions of Section 25(F) of the Industrial Disputes Act, but since it has already been held that teachers are not workmen under the Industrial Disputes Act, [see Miss A. Sundarambal Vs. Government of Goa, Daman and Diu and Others, this point and the ones relating to violation of the provisions of the Industrial Disputes Act are not taken into consideration and are accordingly rejected.

13. The teacher-petitioners have also alleged violation of the principles of natural justice inasmuch as, according to them, neither any notice nor any notice to show cause was issued or given to them prior to abolition of their posts. Even after the letter dated 30.5.2001 was issued, the teacher-petitioners filed an appeal on 4.6.2001 before the authorities wherein they requested that the Schools in question should be handed over to the Government as after so many years, their posts cannot be declared as abolished. They further prayed that they should be adjusted in alternative posts for jobs, but the respondent- authorities have not paid any heed to their request. The Teacher-petitioners have further stated that even the request made to the Management for introduction of voluntary retirement scheme at par with other employees of the Management was not attended to although such request was made not only before the Management, but also before the Education Department of the Government. In reply to the aforementioned request, the Block Extension Education Officer

apparently had written a letter to the Hindustan Copper Limited/Indian Copper Complex and in reply thereto, the Assistant General Manager (Personnel) by his letter dated 21.10.2000, addressed to the Block Extension Education Officer, while requesting that the matter should be taken up with the Education Department, Government of Bihar for taking over of the School, stated that consequent upon acute financial crisis, the Company has not been able to pay salary to their employees for the last two months and some of their facilities such as LTC, Leave Encashment etc. had been suspended and that the Company had not been able to remit the monthly grants to the School Management Committee on regular basis. He further informed that the School staff have not been paid their salary for the last two months and that inspite of approach to the Education Department, Government of Bihar to take over the Schools, no concrete reply had been received. Finally, the Assistant General Manager (Personnel) informed that the Company does not have any objection if the Government takes over the School.

14. According to the teacher-petitioners, inspite of such requests having been made by the Management, the State Government failed to take any final decision in the matter and the Management on their part, without waiting for the final decision at the State level, issued the impugned orders dated 30.5.2001. The petitioners have also made reference of various other representations and have also stated that letters were sent by the Block Extension Education Officer to the Management asking them to explain as to under what circumstances they had taken a final decision without reference to the State Government, but all such efforts went in vain.

15. These teacher-petitioners have further stated that the Deputy Development Commissioner, East Singhbhum at Jamshedpur had written a letter as early as on 23.10.2000 to the Sub-Divisional Officer, Ghatshila wherein while referring to some representations received from the teaching and non-teaching staff relating to harassment being faced by them, he directed the Sub- Divisional Officer, Ghatshila to submit report within 10 (ten) days. A copy of that letter was sent to the Chairman of the Company directing him that till inquiry was complete, no action should be taken against the teaching and non-teaching staff. These teacher-petitioners have further stated that although they have been in continuous service for such a long period of time, their services have been terminated and the services of some junior counterparts have been retained. Mrs. M.M. Pal submits that the action of the Management amounts to disobeying the orders of the Deputy Development Commissioner and is an arbitrary act because of the dual rule that they have played inasmuch as, they themselves prevented the Government from taking over the Schools saying that they were capable for running the Schools themselves and when the Officers of the Government wanted that they should take steps for handing over the School to them, they dilly dallied with the matter and did nothing.

16. Mr. P.K. Sinha, learned Senior Advocate appearing for the Management of

Hindustan Copper Limited, Indian Copper Complex has submitted that he is representing the Management of Hindustan Copper Complex and its authorities and also ICC Management schools. According to him, the financial position of the Company had dipped to such low heights that a paltry grant of Rs. 21,000/- which has been referred to in the letter dated 12.9.1980 (Annexure 18/A) appended to the WP (S) No. 2459 of 2001) was nothing compared to crores of rupees which the Company was incurring while funding the School.

17. Mr. P.K. Sinha, learned Senior Counsel appearing on behalf of the Management has further stated that this case cannot be adjudicated exclusively by keeping the cases of the teachers at the fore-front because the objects and functions of the Company have got to be considered at the same time as otherwise there would be no proper determination of the case. The need to run the School was in relation to catering to the needs of the wards of the employees of the Company and if in that process the wards of the people living in the surrounding areas got benefited that by itself cannot become a reason for holding that the dominant object of the Company was to run the Schools and therefore, even if they are not in a position to maintain and run the same, they would still be forced to do so.

18. In the counter affidavit, it has been stated that the Hindustan Copper Limited is a Government of India Company having been taken over by an Act of Parliament which was called the Indian Copper Corporation Act, 1972. The Ministry of Finance, Government of India constituted a Committee which was called Chellaiya Committee which submitted a report sometimes in 1993. According to that report, it was evident that as compared to the world copper reserves of over 525 MT, the copper resources of India were estimated at 6.3 MT. It is further evident that the demand of copper in India at present forms roughly about 2% of the world consumption. It is also evident that a large proportion of copper consumption in the company is being imported. Subsequently, the matter was placed before the Board of Directors of the Hindustan Copper Limited for considering that the Mosabani Group of Mines consisting of Mosabani (including Badia) Mines, Surda, Pathargoda and Kendadih be closed down as it was not feasible to operate the Mines. The Mosabani Mines became inoperative because of (a) rising cost of production; (b) reduction of import duty of copper from 140% during 1980 to a mere 32% in the present; and (c) slump in the long run metal exchange price of copper. Accordingly, the appropriate authority, i.e., the Government of India, Ministry of Labour by order dated 23.12.1999 granted permission for closure of the industrial establishment at Mosabani Mines with effect from 1.12.1997 (See Annexure ''B'' to the counter affidavit).

19. In view of the aforementioned closure of the Mines of the Hindustan Copper Limited, the IGC Complex reduced their manpower and most of the employees/ workmen have left after receiving adequate compensation under the Voluntary Retirement Scheme. It has also been stated at paragraph 10 of the counter-affidavit that the Management, taking into consideration the education of the

wards of the employees, construed different School Buildings on its own lands and handed over the same to the Managing Committee. These Schools came to be known as the Committee Managed Schools. The entire recurring aid is provided by the Management, but the Management of the School is controlled by the duly constituted Managing Committee and the Management of Hindustan Copper Limited does not, in any way, control the affairs of the School. However, for purposes of taking recognition from the Government of Bihar, the Management has rendered all possible helps and as early as on 12.9.1980, the ICC Middle School, Moubhandar/Mosabani Mines Middles school referred the matter to the Director, Secondary Education informing him that the Management was running the aforesaid two Middle Schools, but the day-to-day affairs are being managed by the Managing Committee. In the said paragraph, it has further been stated that the Government of Bihar duly recognized these Schools. However, later on the Company wrote a letter in the year 1980 itself that it had decided to meet the entire expenditure and requested the Government to stop financial assistance with immediate effect. This letter has been marked Annexure ''D'' and it is equivalent to Annexure 18/A of the Writ Petition.

20. However, due to financial crunch, the mining activities in the area started becoming substantially reduced and after closure of the substantial mines, the proportionate requirement of the employees/ workmen also reduced. Accordingly, the necessity of imparting education to the wards of the employees was also accordingly reduced. The financial constraints of the Company which was funding the Schools including the teaching and non-teaching staff was so huge that the costs ran into more than crores of rupees annually. The Board of Directors were unable to fund the Schools and accordingly, the impugned decision was taken.

21. The specific stand of the Chair-man-cum-Managing Director of Hindustan Copper Limited, ICC, Moubhandar is that there is no legal obligation that the Management, inspite of incurring loss and closure of the mines for which the Company exists, has an obligation to continue to run and maintain the Schools and to employ and maintain the teaching and non-teaching staff of the said schools.

22. At paragraph 15 of the said counter affidavit, it has been stated that due to acute financial crisis of the company for the last 5-6 years, the committee was not getting proper financial support. The Company was incurring heavy loss due to crunch in copper prices and the combined effect of the above two factors and rising costs of inputs, the mines had become un workable to such an extent that even to pay the salary of its regular employees in time and maintain normal production, there was therefore no option but to close down few of these schools which will obviously affect education of the children of the area. Under the circumstances the management felt that the Government of Jharkhand should consider taking over these schools immediately.

23. At paragraph 16 it has also been stated that by letters dated 1.5.2001 and

10.5.2001, which are collectively marked as Annexure ''F'' to the said counter affidavit, repeated representations were made at the level of the Management to the Government that the latter should take over the Schools in question, because the Company was not in a position to continue funding the Schools due to circumstances beyond its control.

24. Mr. P.K. Sinha, learned Senior Advocate appearing for the Management has submitted with reference to paragraph 19 of the counter affidavit that the Jharkhand Government is contemplating to take over the Schools in question and if it does so, the Company would provide the existing building and the infrastructure to the Government so that they may continue running the Schools without disruption. It has further been stated at paragraph 28 of the counter affidavit that it is true that joint representations were made to the Chairman, but due to closure of the Mines and acute financial crunch and inspite of all sympathy for the teachers, the Company was absolutely helpless to provide any relief to them. It has further been stated that the State of Jharkhand should come forward and fulfill its legal obligations since the Company unable to run the Schools and it has made all attempts so that the Schools could be taken over by the State of Jharkhand. It has been repeated at paragraph 29 that the Company has no objection to hand over the School buildings, furniture, fittings and all other assets concerning the Schools in favour of the State. At paragraph 30 it has been stated that the Company shall, as far as possible, provide quarters for the teachers and staff for running the aforesaid Schools subject to the condition that electricity and water charges will have to be borne by the occupants and if these conditions are accepted by the teachers or the State of Jharkhand, the respondent-Company would have no objection.

25. The counter-affidavit of the respondent No. 3 (i.e., the District Superintendent of Education, Singhbhum East) speaks in favour of the teacher-petitioners. At paragraphs 7 and 8, the District Superintendent of Education, Singhbhum East has stated that retrenchment of the petitioners from their service is against the law, principles of natural justice and also against the rules of the Company. It has further been stated that the teacher-petitioners were working for more than 20 years and without giving any opportunity of showing cause, their services could not have been dispensed with just like that. At paragraph 9, reference has been to a letter dated 23.10.2000 (Annexure 19) issued by the Administrative Office under the signature of the Deputy Development Officer in which the Sub-Divisional Officer was deputed to inquire into the matter and it was directed that the School Management should not take any action till completion of the inquiry. But inspite thereof, the Management dispensed with services before completion of the inquiry.

26. During the course of hearing of these Writ Applications, the State representatives were personally present, but they took a stand, which was totally opposed to the stand of the District Superintendent of Education. Mr. Amit Khare, the Secretary, Primary, Secondary and Higher Education, Government of

Jharkhand submitted that the Government was not inclined to take over the Schools in question. Thereafter, an amendment application was filed on behalf of the petitioners [see paragraph 4 at running page 239] stating that since the State Government was not inclined to take over the Schools in question, the Central Government may be directed and accordingly, the Union of India and other authorities of the Government of India be impleaded as party respondents. The amendment application was filed on 20.3.2003. However, on 8.7.2003, the learned counsel for the petitioners submitted that they have not made any prayer against the Central Government and therefore, they are prepared to argue the cases in their absence. They further specifically stated that since the Union of India has nothing to do with these matters, therefore, in the interest of justice, the matter be taken up finally and disposed off as expeditiously as possible. In that view of the matter, these applications were listed under the heading ''for hearing'' and arguments were heard and concluded.

27. Subsequently on 22.7.2003, a supplementary affidavit has been filed on behalf of the respondent No. 4, i.e. the Chairman-cum-Managing Director, Hindustan Copper Limited, ICC wherein a letter dated March 2003 issued by the Government of Jharkhand under the signature of the Secretary has been brought on record. In that letter, which has been marked Annexure ''I'', the stand of the Government is that they are not in any way interested in running the Schools, but they are ready to get the students of the Committee Managed Schools admitted in other Government Schools within the same area in equivalent classes in which they are studying.

28. This Court is therefore, faced with the onerous task of adjudication of the lis between the Teachers and the Management on the one hand and between the Students-their Guardians and the Management on the other hand.

29. Now, the question therefore, that falls for consideration before this Court is as to whether the teacher-petitioners are entitled to for issuance of a Writ directing the Management of Hindustan Copper Limited, Indian Copper Complex, Ghatshila to rescind and/or cancel the order dated 30.5.2001, take back/ reinstate the teacher-petitioners in service and continue to either run the Schools themselves or allow them to hand over their Schools to the State Government?

30. In order to find answer to the aforementioned questions, one has to take into consideration the pleadings and the law pleaded and involved in these cases. One thing that stands out very loud and clear and which cannot be a subject-matter of doubt is that the dominant object of M/s. Hindustan Copper Limited is mining of copper and engaging itself in activities which are incidental and ancillary to the extraction and excavation of copper. Education is definitely not its dominant object and the subject "education" cannot be said that it is incidental or ancillary to the extraction and excavation of copper. The law which governs the Management of Hindustan Copper Limited are the Labour Laws including the Industrial Disputes Act and in relation to their application for closure, the appropriate authority under the Government of India, Ministry of Labour, by

Annexure ''B'' granted them permission for such closure of the industrial establishment at Mosabani Mine with effect from 1.12.1997. That being the position, an activity which is alien to the dominant object of the Company cannot be enforced to be carried on in perpetuity even if such a field of activity related to educating the wards of the employees of the Management because, such an education or an activity or an educational activity cannot be said to be an industrial process with which the Company is exclusively and solely concerned with. It was very noble on the part of the Management to initiate steps for educational advancement of the wards of the employees, but such a noble object cannot be stretched to a limit of making it or deeming it to be an integral part of the dominant object. In this context, the judgment of the Hon''ble Supreme Court of India in the case of Bharat Barrel and Drum Mfg. Co. Private Ltd. Vs. Govind Gopal Waghmare and Another, is worth referring to. At paragraph 6 of the said judgment, the Hon''ble Supreme Court of India has inter alia observed as follows :--

"Education seeks to build up the personality of the pupil by assisting his physical, intellectual, moral and emotional development. To speak of this educational process in terms of industry sounds so completely incongruous that one is not surprised that the Act has deliberately so defined workmen u/s 2(s) as to exclude tachers from its scope. Hence it is clear that any problem connected with teachers and their salaries are outside the purview of the Act, and since the teachers from the sole class of employees with whose co-operation education is imparted by educational institutions, their exclusion from the purview of the Act necessarily corroborates the conclusion that education itself is not within its scope."

31. In that view of the matter, all the arguments of the learned counsels for the petitioners must fail because for the primary reason that the process of imparting education can never be said to be an industrial process nor can it be said to be an integral part of the dominant object of the Company and therefore a Writ of mandamus cannot be issued enforcing the Management to continue with an activity which is not included in its objects functions education being neither a mining activity nor an industrial process. Therefore, the judgments cited by the learned counsels for the petitioners cannot come to their rescue. Mrs. M.M. Pal, learned counsel for the petitioner relied upon the judgment of Hon''ble Supreme Court of India in the case of State of Haryana v. D.R. Sangar in support of her contention that the decision to abolish the post has not been taken in good faith and that such a decision cannot be used as a cloak or pretence to terminate the services of a person, I am afraid this decision cannot be made applicable in the facts and circumstances of this case because, the decision to abolish the posts, in the instant case, cannot be said that it is a cloak or a pretence to terminate the services of the petitioner. This decision was taken after intensive deliberations and the Company took all care and caution to strictly abide by the laws that govern it and in that process, they applied for closure and the appropriate authority of the Government of India, Ministry of Labour, which is the appropriate

Government in relation to the petitioner, granted that permission. In that view of the matter, it cannot be said that the action in abolishing the posts was not taken in good faith.

32. The other judgment cited by Mr. M.M. Pal is Jawaharlal Nehru University Vs. Dr. K.S. Jawatkar and Others, for the proposition that juniors having been retained, the principle of "last come, first go" should have been followed. In the backdrop of the factual matrix of the cases, this principle will also not apply considering that the decision was to abolish the posts itself. By abolition of posts, even some senior teachers may have to go, while some teachers, in other posts, which are not abolished and who are junior will continue. This cannot be treated to be either irrational or illegal. Moreover in the case of abolition of posts, the principle of "last come, first go" has no application. The post itself having been abolished, the Teacher-petitioners services cannot be said to have been terminated as a consequence of any displinary proceeding. It has so been done because of abolition of posts due to financial incapacity of the Company. Mrs. M.M. Pal has further relied upon the judgment of the Supreme Court reported in M. Ramanatha Pillai Vs. The State of Kerala and Another, and Parshotam Lal Dhingra Vs. Union of India (UOI), in support of her contention that if abolition of posts are mala fide and if others have been retained, the same would not be valid and would be hit by Article 14 of the Constitution of India. I am afraid these decisions would also not apply because, I have already held that the decision to abolish the neither mala fide nor invalid.

33. It is true that the teacher-petitioners would be thrown out of their jobs, but a Writ Court cannot issue Mandamus enforcing the Management to take them back in service. They being not a part of the dominant object of the Company, they cannot consequently be deemed to be the employees of the Management and therefore, the concept of taking back in service or reinstating them being a concept which occurs only between an employer and employee, cannot be extended to the petitioners.

34. The other demand of the teacher-petitioners to the effect that Voluntary Retirement Scheme should be given to them at part with other employees of the Management cannot also be extended to them. The V.R. Scheme is applicable only in respect of workman and executive who come under the V.R. Scheme. The teaching staff of the Schools are not direct employees of the Company, save and except to record that the Company on nobel and humanitarian considerations and for public good, was providing funds so long as they were afford to do so. Having themselves been subjected to acute financial crisis and having obtained permission of closure, the V.R. Scheme cannot be thrust nor can it be imposed upon the company vis-a-vis the Teacher-petitioners and in any event the decision of the Company to abolish the posts cannot be said to be mala fide.

35. Mrs. M.M. Pal and the other learned counsels for the petitioners have also submitted that education is not only a part of the Directive Principles of State Policy, but by reason of the 86th amendment to the Constitution by the

amendment Act of 2002, "Article 21-A" has now been inserted making the right to education a fundamental right. Article 21A casts a mandate upon the State to provide free and compulsory education to all children of the age of 6-14 years in such manner as the State may, by law, determine. In the instant case, the State has finally come out with a specific plea, that they have taken a decision not to take over the Schools, but they would ensure the admission of the students in other Government Schools within the area. To that extent therefore, in this case, it cannot be said that the State has failed in ensuring the mandate of Article 21A of the Constitution of India or of the Directive Principles of State Policy. It is well know that a Writ of mandamus cannot be issued directing the Government to take over a School or to open a School. Reference for the aforesaid proposition may be had from the judgment of a Full Bench of the Patna High Court in the case of Sri Sidheshwar Prasad and Ors. v. The State (etc.) reported in (1999) 3 PLJR 490 and a judgment of a single Judge of the Patna High Court in the case of Ramnath Ram and Ors. v. The State (etc.) reported in 1995 (1) PLJR 359. To that extent therefore and taking into consideration the stand of the Government, a Writ of mandamus cannot be issued upon the Government of Jharkhand to take over the School, save and except to record a sincere desire of this Court that they may reconsider the matter.

36. In any even, the Government has already taken a stand to facilitate the admission of the students in the other Government Schools in the same area. In view of the said stand of the Secretary, Department of Primary, Secondary and Higher Education, there is no difficulty therefore, in directing the State Government to immediately and forthwith take all possible steps in relation to the students of the Schools, so that their careers are not jeopardized.

37. Consequently and for the foregoing reasons, the Writ Applications filed by the teacher-petitioners WP (S) 2459, 2806, 2973, 3016 and 4453 of 2001 are dismissed.

38. So far as the other two Writ Applications are concerned, namely, WP (C) Nos. 4392 ad 4645 of 2001, they have been filed by the Guardians/Parents of the students and who are aggrieved by the decision dated 16.7.2001 issued by the Executive Director (Personnel), Hindustan Copper Complex, Tamra Bhawan, 1, Ashutosh Chowdhary Avenue, Kolkata-19 communicating the decision of the Hindustan Copper Limited to the effect that notices be given to the parents of the students of the three Committee Managed Schools at Moubhandar, Mosabani and Surda as also to the teaching non-teaching staff informing them that the Schools shall be closed after completion of the present session, i.e., 31.3.2001. Since this Court has already dismissed the writ applications filed by the teacher-petitioners, no interference is called for by this Court in relation to the aforementioned letter dated 16.7.2001, save and except to dispose of the said Writ Applications with a direction upon the State Government to strictly adhere to their decision which they have taken and which has been brought on record vide Annexure ''I'' appended to the supplementary affidavit of the Chairman-cum-Managing

Director, Hindustan Copper Limited, ICC and which is suggestive of the fact that the Government has assured that they would ensure the admission of the students of the Committee Managed Schools in equivalent Government Schools running in the same area. This must be done forthwith and the children must not be allowed to suffer.

Writ the aforementioned observations, the aforementioned two Writ Applications, namely, WP (C) Nos. 4392 of 2001 and 4645 of 2001 are disposed off.

However, the remaining Writ Applications, namely, WP (S) 2459, 2806, 2973, 3016 and 4453 of 2001 are dismissed.

There shall however, be no order as to costs.