
(2015) 08 MP CK 0035

In the Madhya Pradesh High Court

Case No : Writ Appeal Nos. 1658, 1659 and 1660 of 2007

South Eastern Coalfields Ltd. and Others

APPELLANT

Vs

Vishnu Prasad Mishra and Others

RESPONDENT

Date of Decision : 04-08-2015

Acts Referred:

Citation : (2015) 08 MP CK 0035

Hon'ble Judges : A.M. Khanwilkar, C.J;K.K. Trivedi, J

Bench : Division Bench

Advocate : Indira Nair, Learned Senior Advocate assisted by Rajas Pohankar, for the Appellant; S.K. Rao, Senior Advocate assisted by Sanjeev Chaturvedi, Advocate and P.N. Pathak, Advocates for the Respondent

Final Decision : Allowed

Judgement

K.K. Trivedi, J—This common judgment will govern the disposal of Writ Appeal No. 1658/2007 (South Eastern Coalfields Ltd. & another v. Vishnu Prasad Mishra and others); Writ Appeal No. 1659/2007 (South Eastern Coalfields Ltd. v. Dinesh Kumar Singh and others); and also Writ Appeal No. 1660/2007 (South Eastern Coalfields Ltd. and others v. Smt. Sarifunisha and others). Since three writ petitions were decided by a common judgment by the learned Single Judge, which has been called in question in these appeals, the same were heard together.

2. We have also heard the learned counsel for the parties in Writ Appeal No. 428/2010 (Mohammad Hassan v. South Eastern Coalfields Ltd.); W.P. No. 9378/2009 (Janardan Tiwari & ors v. South Eastern Coalfields & ors) and Writ Petition No. 11679/2010 (PIL) (Gyanwati Singh v. South Eastern Coalfields Ltd. and others). However, it is agreed that orders in respect of these matters be passed after deciding the issues involved in these writ appeals under consideration.

3. Facts giving rise to the filing of these writ appeals in brief are that the writ

petitioners, working as teachers in the school run by South Eastern Coalfields Limited Education Society, Kotma Colliery, approached this Court by filing three separate writ petitions. For convenience, the reliefs claimed in the said writ petitions are reproduced hereinafter:--

A] Misc. Petition No. 2432/1989 (W.A. No. 1660/2007)

"(i) To pay to the petitioners the same salary as is being paid to the other teachers and also give them all the facilities like LTC, House Accommodation, Free Electricity, Free Coal, Conveyance allowance and Free Medical aid etc. together with the arrears of salary from the date of their appointment till date and continue to pay the same in future.

(ii) To regularise the services of the petitioners and to give them promotions and all benefits available to the confirmed regular employees taking in consideration the duration of their service.

(iii) To pass any other writ/writs order and directions in favour of the petitioners including the cost of petition as the Court deems fit in the facts and circumstances of the case."

B] Writ Petition No. 1692/1996 (W.A. No. 1658/2007)

"(i) This Hon"ble Court be pleased to issue a writ of mandamus/writs/directions directing the respondents to pay the salary to the petitioners from the month of June 1995 onwards with interest at the rate of 12% per annum on the due amount as shown in Annexure-P/5.

(ii) Any other relief/reliefs which this Hon"ble Court may deem fit may kindly be given to the petitioners."

C] Writ Petition No. 1074/2003 (W.A. No. 1659/07)

"(i) The Hon"ble High Court be pleased to direct the respondents through suitable writ to pay same salary and other benefits like free coal, free Medical Aid, free residential accommodation, L.T.C. And other benefits like Gratuity, E.P.F., P.P.F., as is being paid to other equivalent Colliery staff.

(ii) To pay to the petitioners the entire arrears of salary and other benefits with interest thereon at 12% per annum forthwith.

(iii) To grant any other relief in favour of the petitioners, as deemed fit in the facts and circumstances of the case, including the cost of this litigation."

4. Precisely, the reliefs claimed in the first writ petition was for a direction against the respondents to treat the writ petitioners as, the employees of the appellant - South Eastern Coalfields Limited (hereinafter referred to as the SECL for brevity). It was contended that persons like writ petitioners were though appointed by the Society, but the said Society being an alter ego of SECL, in fact, the writ petitioners were appointed indirectly by the appellant SECL and, therefore, they were entitled to the same treatment as were extended to the

employees of SECL. In the initial pleadings only few documents were placed on record by the petitioners in the writ petitions, but subsequently by filing rejoinder, further documents were filed by them.

5. While denying the allegation of appointments, more particularly the master and servant relationship between the writ petitioners and SECL, returns were filed. The documents so filed by the petitioners in the writ petition as also in the rejoinder were replied to. It was categorically stated by the appellants that, the writ petitioners by no stretch of imagination could be said to be the employees of SECL or Western Coalfields Limited (hereinafter referred to as the WCL for short) as they were never appointed by SECL or WCL, as the case may be. It was the specific stand taken by the appellants that the Education Society was established for the purposes of running the school, by the erstwhile owner of the colliery and later on was taken over by the Society privately formed. The appellants merely agreed to provide financial assistance by way of grants to the said Society to run the school. Further, no financial or administrative control over the functioning of the Society was with the Company SECL and as such, the writ petitioners cannot be treated as employees of the appellants.

6. The learned Single Judge decided the aforesaid three writ petitions by common judgment on 29.8.2007, which is challenged in this intra Court appeal. The operative part of the impugned judgment reads thus:--

"20. As a result of the above discussion, Writ Petition No. 1692/1996 is allowed and SECL (respondents) is directed to pay the arrears of salary due to the petitioners from September 2003 with 6% interest from the date of this order till payment. The SECL is also directed to continue to pay the petitioners their salary till they remain in service. The SECL will also pay the costs of this petition to the petitioners which I assess Rs. 5000/-. Miscellaneous Petition No. 2432/1989 and Writ Petition No. 1074/2003, which deal with the question of regularization and equal pay for equal work, are dismissed. The relief of regularization having already been granted, the petitioner to that extent have become infructuous and the relief for equal pay for equal work has been rejected on merits. There shall be no order as to costs on these petitions."

7. This order passed against the appellants is the subject matter of these writ appeals. Learned counsel appearing for the appellants has contended that a jurisdictional error has been committed by the learned Single Judge while holding that the writ petitioners were the employees of the appellants. It is contended that though the issues were framed by the learned Single Judge in paragraph 13 of the impugned judgment, but while answering the first question, manifest error has been committed in holding that the writ petitioners were the employees of the appellants, without reference to the specific plea raised by the appellants in their return which was duly supported by documentary evidence. On the other hand, the learned Judge erroneously proceeded on the assumption that the appellants had admitted the stand of the writ petitioners and gave findings against the appellants on that basis. It is contended that from the documentary

evidence produced by the appellants with the return filed in the writ petitions, it would be abundantly clear that the learned Single Judge has committed manifest error which has resulted in serious miscarriage of justice.

8. To buttress these submissions, learned counsel for the appellants has taken us through the documents which were not disputed by the writ petitioners, rather they were produced by the writ petitioners themselves. The first document which was heavily relied by the writ petitioners was in fact the Constitution of the Society, as has been placed on record in all the writ petitions. The same is available on record as Annx.P/5 with Misc. Petition No. 2432/1989 and as Annx.P/3 with Writ Petition No. 1074/2003. The constitution of the Society, as amended on 2nd September, 1979, prescribed constitution of the WCL Education Society Sohagpur, area Dhanpuri, District Shahdol, having its registration No. 7409/1979, in the Registrar of Firms and Societies, Madhya Pradesh, under the provisions of Society Registrikaran Adhiniyam, 1973 (hereinafter referred to as the Act of 1973 for short). While referring to the object, learned counsel for the appellants has contended that from the bare reading itself, it is clear that the Society was registered privately; and not by the WCL Company after taking a decision by the Board of Directors of the Company. Therefore, it cannot be said to be a Society of the WCL or SECL. Various other aspects have been referred to and it is contended that the Society cannot be said to be one owned and controlled by the appellants and, therefore, the employees of the Society would not automatically become or be treated as the employees of the appellants Company. Therefore, the order impugned is bad in law.

9. In reply to the aforesaid submissions, learned counsel for the respondents - writ petitioners have vehemently contended that when the mines were taken over after nationalisation of coalmines, the school was also taken over by the Company. This fact was not disputed by the appellant Company. Again, when the school was to continue, the appointment of staff was made by the appellants, though for a short period. Thereafter, a decision was taken by the appellant Company and a Society was formed to run the said school. All the office bearers of the Society were none other than high officials of the appellant Company. All orders for appointment, regularisation, promotion and grant of various facilities were made by the officers of the appellants. Even on certain occasion, the letter head of the Company was used. This itself will make it clear that the Society was nothing, but an alter ego of the appellant Company and, therefore, all actions were taken by the Society on the dictate of the Company. Even when the tournaments were organised, the employees of the schools were asked to join the said tournaments along with the regular employees of the appellant Company. From all these circumstances, it was clear that the Society was nothing but creature of the appellant Company and all actions taken by the said Society were in fact the actions taken by the Company indirectly through the Society. Therefore, the view taken by the learned Single Judge in granting the relief to the respondents (writ petitioners) was just and proper and needs no interference by this Court in these intra-court appeals.

10. These submissions are required to be examined in light of the following two questions framed by the learned Single Judge to answer the matters in issue and to grant relief to the respondents. The questions framed in paragraph three, read thus :

"(i) Whether the petitioners are the employees of SECL ? and

(ii) Whether they are entitled for the same higher salary which is being paid to the other teachers of the school on the principle of equal pay for equal work ?"

11. Notably, the learned Single Judge has negated the relief of equal pay for equal work. The respondents (writ petitioners) have not challenged that decision of the learned Single Judge either by filing cross-appeals or for that matter cross-objections. Thus, the issue involved in these appeals is only in respect of the first question posed by the learned Single Judge referred to above and in particular the direction given to SECL to pay salary with interest to the employees of the School run by the Society.

12. We will now advert to the first question and for that purpose, we are required to examine the Constitution of the Society, as the fact is not in dispute that the Society had issued the order of appointment in respect of writ petitioners, who were appointed on regular basis by the Society. For, the employees appointed by the appellant Company was for a short duration on contract basis, only to deal with the emergent situation due to non-availability of regular teachers in the school(s) administered by the Society.

13. As has been pointed out hereinabove, the constitution of the Society prescribes that Sohagpur area, P.O. Dhanpuri, District Shahdol, has decided to establish an Education Society to run educational institution already established for educational, cultural, physical and moral development of the children of its employees. If such a decision was taken by the Company, it ought to have been taken in terms of the Rules of business of the Company by the Competent Authority. No such authorisation has been produced. Indisputably, the appellant is a registered Company under the Indian Companies Act. For any act done, dehors the provisions of the Rules of business of the Company by any officer or employee of the Company will not bind the Company. Nothing has been placed on record by the writ petitioners to show that the decision to establish a Society was in fact taken by the Company. No prayer was made for production of any such document by the respondents-writ petitioners even when a specific stand was taken by the Company that the Society was not established or formed by the appellant-Company. In absence of any such documentary evidence, we are unable to accept that there was a valid decision taken by the Company even at the branch level, to establish the Society for running the school. The fact that some statement is made in the Constitution of the Society, cannot bind the Company - SECL.

14. Notably, the plea raised by the respondents-writ petitioners was specifically denied in the return by the appellants. In paragraph one of the return so filed at

the initial stage in Writ Petition No. 1692/1996, the appellants have categorically asserted that SECL had nothing to do with the establishment, management or running of the school. A rejoinder to the said return was filed by the writ petitioners placing on record documents, but nothing was produced to show that the Society was formed by the appellant Company as such. Even when the additional return to the rejoinder was filed, these facts were categorically pleaded in paragraphs 5, 6, 7, 8 and 9 and a specific plea was raised in paragraph 11 that the educational Society is a registered Society and the only relationship between the Society and the appellants was that the appellants had assured to provide grants to the said Society. Again nothing was said by the writ petitioners nor any document was produced to show that the Society was in fact a front face of the appellant Company.

15. Now the other provisions of the constitution of the Society if are examined, it would be abundantly clear that the entire administrative control of the Society is in the hands of the office bearers of the Society, such as Chairman, Governing body and the Secretary of the Society. The only fact which needs to be noted is that the officers and employees of the appellant Company are members of the said Society. However, that by itself will not make the appellant Company as in complete control of the management of the Society. True it is, that the Managing Committee of the Society consists of the Sub Area Manager, the Manager of Jamuna, Nowrojabad and Amlai and Senior Personnel Officer of the respective sub areas. It is also not in dispute that the Sub Area Manager Kotma, Jamua, Johila, Burhar, is designated as ex-officio Patron-in Chief of the Society/Managing Committee, but this by itself is not enough to show that the said officer was in fact working on the command of the appellant Company in his capacity as office bearer of the Society. Powers and duties of the Chairman also nowhere prescribe that he was expected to act on the command of the management of the appellant Company. The affairs of the Society are to be and were managed by the Managing Committee and every decision taken by majority of votes. Thus, it is clear that the officers of the appellant Company though were ex-officio office bearers of the Society, but the Company itself has had no administrative control over the affairs of the Society. There is nothing in the Constitution of the Society that the Society was answerable to the appellant Company in any manner. In other words, the Society was established to be an independent juristic person.

16. The other aspect, is that, though the budget was required to be passed by the educational institution for meeting the day to day expenses as also to make payment of salary to the employees of the Society appointed in the school, yet no stipulation is found in the Constitution that any prior approval was required to be taken from the appellant Company to make any expenses. The audits of the accounts of the Society and the school were to be conducted by a Chartered Accountant appointed by the Society and not by the Company, albeit the same Auditor as that of the Company. The only requirement was that after the budget is passed, a formal request was to be made to the Company for release of grant. Indeed, the Company would favour the Society by paying grant after taking a

decision in its Board of Directors. That was only to give financial assistance to the Society and nothing more. Thus, from this narration, it is also clear that the appellant Company was having no financial control over the Society.

17. The other important aspect is that in case of dissolution of the Society all its assets and properties whether movable or immovable, were to vest in the State Government and not in the appellant Company. The assets were to be obtained only with the prior approval from the Registrar of the Societies and not from the Company. From these facts, it is clear that the appellant Company was having no financial, administrative or otherwise control over the management of the Society.

18. The findings given by the learned Single Judge in paragraph 14 onwards in the impugned judgment indicates that the law laid down by the Apex Court in the case of *Parimal Chandra and Others Vs. Life Insurance Corporation of India and Others*, (1995) 3 JT 288 : (1995) 2 LLJ 339 : (1995) 2 SCALE 518 : (1995) 2 SCC 611 Supp : (1995) 3 SCR 34 : (1995) 2 UJ 505 and *Indian Petrochemicals Corpn. Ltd. and Another Vs. Shramik Sena and Others*, AIR 1999 SC 2577 : (1999) 5 JT 339 : (1999) 2 LLJ 696 : (1999) 4 SCALE 432 : (1999) 2 SCALE 541(1) : (1999) 6 SCC 439 : (1999) 1 SCR 47 Supp : (1999) AIRSCW 2740 : (1999) 6 Supreme 542 were taken into consideration. The aforesaid decisions, however, are cases of statutory obligation or as a service condition to provide certain facilities to the employees. In the facts of those cases, it was held that though providing a canteen facility to the employees of the Company in the said case was not statutory, but it became a condition of service of the employees and, therefore, the employees of such canteen would indirectly become the employees of the Company. However, that is not the case in hand. On the contrary, a finding is recorded by the learned Single Judge that nothing was available to establish that the Company was under a statutory obligation to provide educational facility to the children of the employees. Nevertheless, the learned Single Judge proceeded to consider whether still it can be said that the appellant Company had accepted the obligation to run the school in question for the children of Company employees. That approach cannot be countenanced. The learned Single Judge has considered certain aspects which are required to be dealt with one by one.

19. In the first place, the learned Single Judge has found that before nationalisation of coalmines, the earlier Company had decided to establish and manage the school for the staff and officers of the coalmines. But what has been glossed over, is that, after the Nationalisation of Coalmines Act, 1973 (hereinafter referred to as Nationalisation Act 1973 for brevity), the liability on the appellant Company of the employees employed by the erstwhile management was only till those employees were working and in service. The moment the said employees retired or shifted or have left the employment, and the management of the school was taken over by the Society, the role of appellant Company had come to an end. Any person appointed by the Society thereafter would not be covered under the provisions of the Nationalisation Act,

1973, and could not be treated as an employee of the Company automatically. The findings recorded in this respect in paragraph 15(i) & (ii) are untenable. Further, the liability of the Company qua employees of the Society was categorically denied by the appellants in the return, that the appellant had taken over the responsibility of the school as well. The stand was that the appellant Company had assured the Society to give financial assistance for running the school and this fact was recorded in the National Coal Wage Agreement which was subsequently entered into and become a statutory agreement. No finding contrary to the aforesaid agreement, de hors the provisions of law could have been recorded. Thus, it was neither a case of statutory obligation or one of service conditions of employees not appointed by the Company SECL.

20. The information sent by the Sub Area Manager of the Company on 6.3.1978, was duly explained by the appellants in their return. This plea has not been taken note of. Instead, finding is recorded by the learned Single Judge that because of that letter the appellant had admitted that the Society was established by the appellant. On this erroneous basis the learned Single Judge went on to hold that the employees of the Society would become the employees of the appellant Company. With great respect, we have to say that we completely disagree with the finding recorded by the learned Single Judge, which is contrary to the just stand taken by the appellants in its return. When the appellants have not admitted any such fact, it was not open to record a finding that the appellants have admitted that fact. That is an error apparent on the face of the record.

21. The findings recorded by the learned Single Judge in paragraphs 15 (iii), are also contrary to the specific stand taken by the appellants in their return as has been pointed out hereinabove. When there was no such decision of the Company made in terms of the provisions of the Rules of business of the appellant Company, to establish any Society for the purpose of management of the school, the finding of fact recorded against the appellants could not have been recorded. We are unable to accept such a finding of learned Single Judge.

22. As has been pointed out, nothing has been found in the entire Constitution of the Society warranting conferral of complete or partial financial or administrative control on the appellant Company. In fact, the learned Single Judge has not analysed the provisions of the Constitution of the Society in its entirety and in correct perspective. Merely because some of the employees or officers of the Company have been made ex-officio office bearers of the Society, it is not possible to conclude that the Society in fact was fully controlled by the appellant Company - both administratively and financially. With great respect, we have to say that we cannot countenance the findings recorded by the learned Single Judge, as recorded in sub paragraphs (iv), (v), (vi), (vii), (viii) & (ix) of para 15, of the impugned judgment. We say so because, all the documents referred to in these paras were denied by the appellants with proper explanation in that respect in their return. However, no analysis of the pleadings of the appellants

has been done by the learned Single Judge and relying on those documents, it was erroneously held that the Society was in fact the creation of the appellant Company and thus was the front face of the appellants.

23. As has been pointed out by the learned counsel for the appellants, law is well settled in this respect. In the case of Indian Petrochemicals Corpn. Ltd. and Another Vs. Shramik Sena and Others, AIR 1999 SC 2577 : (1999) 5 JT 339 : (1999) 2 LLJ 696 : (1999) 4 SCALE 432 : (1999) 2 SCALE 541(1) : (1999) 6 SCC 439 : (1999) 1 SCR 47 Supp : (1999) AIRSCW 2740 : (1999) 6 Supreme 542 , the Apex Court while considering similar issue held in para 8 thus :

"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 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 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."

(emphasis supplied)

24. Recently, the Apex Court in the case of National Aluminium Company Ltd. and Others Vs. Ananta Kishore Rout and Others, (2014) AIRSCW 3448 : (2014) 6 JT 153 : (2014) 6 SCALE 540 : (2014) 6 SCC 756 , has summarised the principles in paragraphs 21 to 24, 26, 29, 30 and 32, in the following words :

"21. We have considered the aforesaid submissions with reference to the record of this case. No doubt, the school is established by NALCO. NALCO is also providing necessary infrastructure. It has also given adequate financial support inasmuch as deficit, after meeting the expenses from the tuition fee and other incomes received by the schools, is met by NALCO. NALCO has also placed staff quarters at the disposal of the schools which are allotted to the employees of the schools. Employees of the school are also accorded some other benefits like recreation club facilities, etc. However, the poser is as to whether these features are sufficient to make the staff of the schools as employees of NALCO.

22. In order to determine the existence of employer - employee relationship, the correct approach would be to consider as to whether there is complete control and supervision of NALCO. It was so held by this Court in Dharangadhara Chemical Works Ltd. Vs. State of Saurashtra, AIR 1957 SC 264 : (1957) 1 LLJ 477 : (1957) 1 SCR 152 , way back in the year 1956. The court emphasised that the relationship of master and servant is a question of fact and that depends upon the existence of power in the employer, not only to direct what work the servant is to do but also the manner in which the work is to be done. This was so explained by formulating the following principle:--

"14. The principle which emerges from these authorities is that the prima facie test for the determination of the relationship between master and servant is the existence of the right in the master to supervise and control the work done by the servant not only in the matter of directing what work the servant is to do but also the manner in which he shall do his work, or to borrow the words of Lord Uthwatt at Page 23 in Mersey Docks and Harbour Board v. Coggins & Griffith (Liverpool) Ltd., 1947 AC 1: (1946) 2 All ER 345 (HL), "The proper test is whether or not the hirer had authority to control the manner of execution of the act in question."

23. It has been established from the documents on record that both the schools have their own independent Managing Committees. These Managing Committees are registered under the Societies Registration Act. It is these Managing Committees which not only recruit teaching and other staff and appoint them, but all other decisions in respect of their service conditions are also taken by the Managing Committees. These range from pay fixation, seniority, grant of leave, promotion, disciplinary action, retirement, termination etc. In fact, even the Service Rules, 1995 have been framed which contain the provisions; delineating all necessary service conditions. Various documents are produced to show that appointment letters are issued by the Managing Committees, disciplinary action is taken by the Managing Committees, pay fixation and promotion orders are passed by the Managing Committees and even orders of superannuation and termination of the staff are issued by the Managing Committees. It, thus, becomes clear that day to day control over the staff is that of the Managing Committees. These Managing Committees are having statutory status as they are registered under the Societies Registration Act. Therefore, Mr. Venugopal is

not right in his submission that Managing Committees do not have their own independent legal entities.

24. Merely because the schools are set up by NALCO or they have agreed to take care of the financial deficits for the running of the schools, according to us, are not the conclusive factors.

26. In the present case, as pointed out above, the day to day supervision and control vests with the Managing Committee, from the appointment till cessation/termination. The exercise which is undertaken by the High Court is in the nature of piercing the veil and commenting that real control vests with NALCO. Though we would come to this aspect a little later, it is necessary to point out at this stage that whether the arrangement/contract is sham or camouflage is a disputed question of fact. In the present case writ petitions were filed and it is not a case where industrial disputes were raised by these employees.

29. From the reading of Para 20 in S.C. Chandra Case, [S.C. Chandra and Others Vs. State of Jharkhand and Others, AIR 2007 SC 3021 : (2007) 10 JT 272 : (2007) 10 SCALE 209 : (2007) 8 SCC 279 : (2007) 2 SCC(L&S) 897 : (2007) 9 SCR 130 : (2008) 1 SLJ 282 : (2007) AIRSCW 5480 it can be discerned that the Managing Committee which was managing the school was treated as an independent body. This case is relevant on the second aspect as well viz. the claim of school employees predicate upon the financial burden that is assured by NALCO. To that aspect we shall advert to little later in some detail.

30. No doubt, there may be some element of control of NALCO because of the reason that its officials are nominated to the Managing Committees of the schools. Such provisions are made to ensure that schools are run smoothly and properly by the society. It also becomes necessary to ensure that the money is appropriately spent. However, this kind of "remote control" would not make NALCO the employer of these workers. This only shows that since NALCO is shouldering and meeting the financial deficits, it wants to ensure that money is spent for rightful purposes.

32. Only because SVM Society agreed to take over the employees, would not mean that NALCO becomes the employer. On the contrary, this clause suggests that but for the intervention of NALCO, the school staff that was engaged by CCM Trust would have been dealt with by CCM Trust. It is a matter of record that CCM Trust runs other schools as well. In that eventuality it would have taken these employees with themselves or retrench these employees in accordance with law. Same is the position of SVM Society who have other schools also. However, this kind of situation is not going to arise in the present case. We place on record the assurance given by the learned Senior Counsel appearing for NALCO that the teaching and other staff of the two schools would not lose their jobs even if present agreement of NALCO with SVM Society comes to an end and the management is taken over by some other agency for running the schools. We direct that NALCO shall stand committed by this assurance and would adhere to

the same for all times to come. The position which emerges, in view of the aforesaid assurance, is that the service tenure of these employees is protected."

25. We are in complete agreement with the learned counsel for the appellants that in absence of any such clinching evidence, learned Single Judge has committed manifest error in holding that the writ petitioners (respondents in the present appeal) were in fact or deemed to be the employees of the appellants. That finding of the learned Single Judge cannot be sustained. Though relying on other decisions, learned counsel for the writ petitioners tried to emphasize that keeping in mind the documents of appointment of writ petitioners, it would be abundantly clear that they were appointed by the appellant Company. We are unable to accept this submissions, in view of the law already pronounced by the Apex Court. Though the decision in the present case was rendered after the decision in the case of S.C. Chandra and others (*supra*), but the fact remains that the said decision was not cited because the decision was rendered just on the date the writ petitions were closed for orders.

26. Facing with this, learned counsel for the respondents writ petitioners submitted that the Society was also impleaded as a party in the writ petitions and was duly served and represented by the counsel. Therefore, a writ can still be issued against the said Society to make the payment of salary to the writ petitioners which was illegally withheld for a long period and for which demand the writ petitions were filed. Firstly, these proceedings are intra-court appeals filed by the appellant Company and no cross appeal or objection is filed by the writ petitioners. Secondly, in a writ appeal of the Company, relief cannot be moulded as claimed in the writ petition to issue any direction to the real employer of the writ petitioners (Society), to make payment of salary to them. We are of the view that in an intra Court appeal filed by the Company SECL no relief can be granted to the writ petitioners who have not challenged the order passed by the writ Court qua the Society.

27. In the case of Food Corporation of India and another v. Seil Ltd. and others, the Apex Court has held in paragraphs 26 and 27, which read thus :

"26. We, however, although agree with the opinion of the Division Bench of the High Court on the legal principle in regard to payment of interest, as has been enunciated by it, having regard to the fact that the respondents did not prefer any appeal, are of the opinion that increase in the rate of interest, as has been directed by the Division Bench, cannot be upheld.

27. We, therefore, in modification of the order passed by the Division Bench, direct that the appellant would pay the amount in question with interest as awarded by the learned Single Judge of the High Court."

(emphasis supplied)

28. In view of the aforesaid, we are unable to accept the submission of the learned counsel for the respondents (writ petitioners) to grant relief to them

against the Society (co-respondent) and have to reject the same. If the writ petitioners have any other remedy against the Society (co-respondent), they are free to pursue the same. That will have to be decided on its own merits and in accordance with law.

29. In view of the aforesaid analysis, writ appeals are allowed. The order impugned in the respective appeal is set aside. Further, the relief claimed against the Company SECL by the writ petitioners is negatived. However, in view of the peculiar circumstances of the case, there shall be no order as to costs.