



2025:CGHC:22585

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WP No. 285 of 1996

Reserved on : 03.04.2025

Delivered on : 09.06.2025

1 - (i). (Deleted) Smt. Bittan As Per Hon'ble Court Order Dated 13-09-2021.
(ii). Satya Prakash Lal S/o Late Shri M.P. Lal Aged About 38 Years.

(iii). Rakesh Kumar Shrivastava S/o Late Shri M.P. Lal Aged About 33 Years.
All above are R/o Ward No. 15, North Jhagarakhand, District Korea, Chhattisgarh.

2 - Anil Kumar Pandey, Asst. Teacher, Primary School, Pauradhar, Post Ravi Nagar, District Shahdol (M.P.), District : Shahdol, Madhya Pradesh

3 - Sheshmani Sharma, Asst. Teacher, Primary School, Jhimar, Post Jhimar, District Shahdol (M.P.), District : Shahdol, Madhya Pradesh

4 - Vishnu Prasad Mishra, Asst. Teacher, Primary School, Rajnagar Colliery, Post Rajnagar, District Shahdol (M.P.), District : Shahdol, Madhya Pradesh

5 - Sudesh Kumar Rajput, Asst. Teacher, Middle School, South Jhagrakhand, Post South Jhagrakhand, District Surguja (M.P.)

6 - R.S. Singh, Lecturer, Higher Secondary School, North Jhagrakhand, Post North Jhagrakhand, District Surguja (M.P.)

7 - Vinod Kumar Tiwari, Lecturer, Higher Secondary School, North Jhagrakhand, District Surguja (M.P.)

8 - Ramavtar Gupta, Lecturer, Higher Secondary School, North Jhagrakhand, District Surguja (M.P.)

--- Petitioners

versus

1 - South Eastern Coalfields Ltd. Through Its Chairman-cum-Managing Director, Seepat Road, Bilaspur., District : Bilaspur, Chhattisgarh

2 - Sanghi Colliery Education Society, North Jhagrakhand, District Surguja (M.P.)

3 - The General Manager South Eastern Coalfields Ltd., Hasdeo Area, District Surguja (M.P.).

--- Respondents

with

WP No. 1675 of 2001

1 - Ramavtar Gupta, S/o Late Shri Ram Bahori Gupta, Aged About 49 Years, Lecturer, Higher Secondary School, Jhagrakhand, R/o Badi Dafai, South Jhagrakhand, P.O. Jhagrakhand, District Korea, Chhattisgarh.

---Petitioner

Versus

1 - South Eastern Coalfields Limited Through Its Chairman-cum-Managing Director, Seepat Road, Bilaspur, Chhattisgarh.

2 – Chief General Manager, South Eastern Coalfields Limited, Hasdeo Area, Ex-Officio President, Singhi Colliery Education Society, P.O. South Jhagrakhand, District Korea, Chhattisgarh.

3 – Chief Personnel Manager, South Eastern Coalfields Limited, Hasdeo Area, Ex-Officio President, Singhi Colliery Education Society, P.O. South Jhagrakhand, District Korea, Chhattisgarh.

4 – District Education Officer, Korea, P.O. Baikunthpur, District Korea, Chhattisgarh.

5 – Principal Higher Secondary School, Singhi Colliery Education Society, Jhagrakhand, District Korea, Chhattisgarh., District : Korea (Baikunthpur), Chhattisgarh

6 - Shri Ram Mani Tripathi, S/o Late Shri Jagdamba Prasad Tripathi, Aged About 63 Years, R/o Nandu Garrage Wali Gali, Telipara, Bilaspur, Chhattisgarh

--- Respondents

For Petitioners	:	Mr. Amrito Das and Mr. Ashok Kumar Shukla, Advocates.
For Resp./SECL	:	Mr. Vinod Deshmukh, Advocate.
For State	:	Mr. Kishan Lal Sahu, Dy. Government Advocate

Hon'ble Shri Narendra Kumar Vyas, J.

CAV ORDER

1. Since an identical issue and common question of facts are involved in both the writ petitions, they are heard analogously and are being decided by this common order.
2. **WP No. 285/1996** has been filed by the petitioners for issuance of direction to the respondents authorities to pay arrears of salary w.e.f. 01/08/1989 to 31/01/1995 without any deduction @ 25% at par with the rate paid to the teachers/lecturers employed with the State

Government and also to pay full salary onwards w.e.f. 01/04/1994 uptill now with bonus etc. without there being any deduction 25% per month.

3. **WP No. 1675/2001** has been filed by the petitioner assailing the order dated 26.06.1996 passed by the respondent/SECL by which services of the petitioner have been terminated. The petitioner has also prayed for issuance of direction to the respondents authorities to treat the petitioner in parity with other teachers and pay him regular salary and arrears.
4. The brief facts in **WP No. 285/1996** as reflected from the record are that:-

(A) The petitioners are working on the posts of Head Master, Assistant Teacher, Lecturer and Teacher respectively with respondent No. 2/Singhi Colliery Education Society, North Jharkhand, District Koriya, now Manendragarh. It is case of the petitioners that the respondent/SECL is providing 100% grant in aid to the society, as such, SECL has every control and supervision over the society including appointment of teachers. It has also been contended that from various sources, SECL is providing financial assistance to the society to run the school.

(B) It has been further contended that respondent No. 1 has entered into an agreement (Annexure P/5) with M.P. Koyla Mazdoor Sabha (HMS) who has no representation of the teachers employed by the respondent No. 2/society. According to the agreement, the benefits of salary as well as arrears would be given to only such teachers who would be signing the said agreement. It has been further contended

that the office bearers of the Union is pressurizing the teachers to pay 25% of the arrears to the union and further 25% of salary per month which was denied by the petitioners, therefore, they have not been extended the benefit of the said agreement.

(C) It is further contended that they are performing the work of teaching from April, 1994, but they have not been paid the salary on the count that they have not accepted and signed the agreement dated 28.03.1997. On the basis of this factual matrix, the petitioners have prayed for grant of difference of salary from 01.08.1989 to 31.01.1995 at par with the salary paid to the teachers as detailed in Annexure P/6 and also prayed for grant of full salary till actually it is paid as detailed in Annexure P/7. It has also been contended that they have submitted various representations (Annexure P/8) raising their grievances which have not been decided. Hence, this petition for aforesaid relief.

5. Respondents No. 1 & 3 have filed their return mainly contending that the petitioners are employees of Singhi Colliery Education Society which is a Society registered under the M.P. Societies Registration Act, 1960. As such, the writ petition of employees employed by the society is not maintainable as there is no relation with the respondent No. 1 & 3. It has also been contended that respondent No. 1 & 3 are not liable to pay any wages to the petitioners and it is also denied that the SECL is giving 100% grant in aid to them. It is submitted that the funds were allocated by the SECL being a welfare scheme which does not confer any right to the petitioners. It has been submitted that the agreement was executed between the M.P. Koyla Mazdoor Sabha (HMS) and the

answering respondents to help the society and it is voluntary agreement executed between the employee of the society and the society. The answering respondents are not the employer of the petitioners. So far as allegation regarding demand by the office bearers of the Union, it is with the member of the union and the respondents No. 1 & 3 have nothing to say and would pray for dismissal of the writ petition.

6. Respondent No. 2 has also filed its return mainly contending that respondent Society was established by the erstwhile private owner Jhagrakhand Colliery Private Ltd. and registered under the Societies registration Act. It is further contended that the services of petitioners No. 1, 5, 6 were terminated on 27.07.1996 & services of petitioners No. 7 & 8 were terminated on 26.09.1996 as such they were not in service. Since the school in which they were working was not aided, the Education Department has no role to play in this matter and any orders issued by the said department are not binding. The Petitioners were paid the amount as follows:-

Sl. No. in the Petition	Name	Period	Amount paid
2.	Anil Kumar Pandey	Feb. 95 to Jan. 96 Feb. 96 to Oct. 96	Rs. 14403.00 Rs. 1762.00
3.	Sheshmani Sharma	Feb. 95 to Jan. 96 Feb. 96 to Oct. 96	Rs. 15423.00 Rs. 6961.00
1.	M. P. Lal	Feb. 95 to Jan. 96 Feb. 96 to 27.07.96	Rs. 23154.00 Rs. 6410.00
5.	R. S. Singh	Feb. 95 to Jan. 96 Feb. 96 to 27.07.96	Rs. 18304.00 Rs. 4934.00
6.	SK Rajpoot	Feb. 95 to Jan. 96 Feb. 96 to 27.07.96	Rs. 15423.00 -Absent from 01.05.95 to 26.07.96
7.	VK Tiwari	Feb. 95 to Jan. 96	Rs. 24038.00

		Feb. 96 to 26.06.96	-Absent during the period
8.	Ramavtar Gupta	Feb. 95 to Jan. 96 Feb. 96 to 26.06.96	Rs. 23127.00 -Absent during the period

and would pray for dismissal of the writ petition.

7. The petitioner has preferred **WP 1675 of 2001** challenging the legality, validity and propriety of the order dated 26.06.1996 (Annexure P-1/A) passed by respondent No. 5/Principal Higher Secondary School, Singhi Collieries by which services of the petitioner have been terminated mainly contending that the petitioner was appointed as Upper Division Teacher on 19.08.1979 in Higher Secondary School Jhagrakhand run by Singhi Colliery Education Society. The petitioner after serving as Upper Division Teacher for nearly nine years, again went through a selection process and was selected for the post of Lecturer in the same school and was appointed as Lecturer on 26.11.87. The petitioner and other teachers of the school were aggrieved by non payment of their regular salary as also non payment of salary in parity with the teachers of State Government, as such they preferred a writ petition bearing W.P. No. 285/95 before the High Court of M.P. at Jabalpur in case of **M.P. Lal and others Vs. South Eastern Coalfields Limited and others**. It is further submitted that after beginning of new academic session of 1996-97, the petitioner rushed to the school and prayed respondent No. 5 to allow him to perform his duties, however he was intimated that his services have been terminated and was informed that in this regard a written order has already been sent to his address. It has been further contended that he has been dismissed from service without issuing any show cause

notice, without conducting any departmental enquiry and in violation of principle of natural justice. It has been further contended that the Principal is not empowered to issue any order of termination as per the bylaws of the society and would pray for quashing of the impugned order dated 26.06.1996.

8. Respondent Nos. 1 to 3 have filed their return wherein it has been contended that the petitioner was not employed by them and respondent Nos. 2 and 3 have been wrongly described as ex officio President of the Singhi Colliery Education Society in the cause title whereas at present they do not hold any post in the society. It is further contended that respondent No. 1 vide circular dated 30.9.99 issued by the Chief General Manager (P&T) S.E.C.L. Bilaspur has directed that no officer of the company should be member of any society and as such no officer of S.E.C.L., in Hasdeo area is a member of the Singhi Colliery Education Society. It has been further contended that the petitioner has challenged the action of respondent No. 5 who is the Principal of Higher Secondary School, Singhi Colliery Education Society, registered under Firms and Societies Act and is an independent authority and they have no control over the affairs of the society, as such the writ petition against them is not maintainable. It has been further contended that no employer/employee relationship subsists between the petitioner and respondents No. 1 & 3 would pray for dismissal of the writ petition.
9. Respondent No. 5 has also filed its reply mainly contending that from the pleadings of the petitioner himself, it is clear that he came to know that his services were terminated w.e.f. 26.06.1996. Thereafter after a

period of 5 years, the petitioner filed the present petition which is liable to be dismissed on the count of delay and laches even there is no explanation of the same. It is further contended that a show-cause notice was issued to the petitioner wherein it was mentioned that the petitioner was negligent towards his duties and was absent for a long time without obtaining any permission. In spite of notice, he did not file any reply and remained absent from 15.09.1995 to 13.04.1996, thereafter 2nd show-cause notice was issued but the petitioner did not turn up for joining, as such he had abandoned his service and would pray for dismissal of the writ petition.

10. The respondent No. 6 has filed its reply mainly contending that the petitioner was working as Lecturer was run by Singhi Colliery Education, Hasdeo Area which is run, financed and managed by SECL/respondent No.1. It has been further contend that the petitioner immediately after his promotion to the post of Lecturer, lost interest in his work and instead of performing his work and duties, he started creating unnecessary disturbance in the smooth functioning of school and tried to persuade other teachers not to perform their duty as well. It has been further contended that the petitioner examined and checked the answer sheets of the subject of Chemistry for class XI and he deliberately checked the answer sheets in a manner to see that all the students got failed in the academic session 1991-1992 which was the unreasonable attitude of working of the petitioner. On the complaint of the students made to the Area Personal Manager of SECL Hasdeo Area, an enquiry was conducted by the then Personal Manager SECL Hasdeo Area Shri L.B. Singh and on that enquiry, the conduct of the petitioner was found to be undesirable. On the basis of

the enquiry report, the then Secretary of the society Shri J.R. Verman issued a warning letter to the petitioner on 27.03.1993 and even after issuance of warning letter, the performance and conduct of the petitioner did not improve and he used to keep himself absent from his duties. The matter was brought to the knowledge of the Chief General Manager Cum Chairman of the society for taking appropriate steps in the matter. For not receiving the salary regularly and properly, a writ petitions was filed before the Hon'ble High Court of M.P. bearing W.P. No. 3536/1993, through colliery Teachers' Association & another Vs. SECL claiming salary at par with the salary of SECL school employees wherein an interim direction was given on 13.09.1993 directing SECL to pay regular salary.

11. This order was not vacated by the High court nor cancelled by the Supreme Court. In the meantime due to non compliance of the interim order dated 13.09.1993 contempt petition was filed and to come out of the contempt proceedings the SECL persuaded Teachers & employees of the school to have an agreement and consequently a settlement dated 06.12.1994 and MOU dated 29.03.1995 was entered into between SECL and teacher & employees and union M.P. Koyala Majdoor Sabha (HAMS). In the settlement, the Principal has been authorized to be the disciplinary. In the MOU dated 19.03.1995 (which was only charifactory in nature) it has been again repeated in para (7) that the Principal will be the Disciplinary authority. Hence a note-sheet was initiated by the respondent in capacity of the Principal, which was submitted before the Chief General Manager which was approved by the Chief General Manager for taking appropriate action against the petitioner and other employees. It has been further contended that in

view of the conditions of the settlement, a committee was also constituted by the Chief General Manager for judging the performance of teachers. C.G.M. authorized the Principal to take action against the petitioner. It has been further contended that the petitioner was removed from his post in the year 1996 and this petition was filed in the year 2001 but no proper explanation has been submitted by the petitioner for delay of five years in filing the writ petition, thus the petition deserves to be dismissed only on the ground of delay and laches. It has been further contended that the authorities of the school Education Department were not required to be consulted for terminating the services of the petitioner as the schools were not getting any grant in aid from the State Government and would pray for dismissal of the writ petition.

12. The petitioner has filed rejoinder mainly contending that the entire action was taken on the behest of respondent No. 6 who was then posted as the Principal in the said school and the action was wholly actuated by malice because the petitioner and his companions had refused to enter into the Memorandum of Understanding (MoU) with the SECL which respondent No. 6 was forcing the petitioner to do. The refusal by the petitioner was a great annoyance to respondent No. 6 and that was what had occasioned the issuance of the order of termination. It has been further contended that respondent No. 6 has submitted certain complaints where students had failed in subject chemistry of Std. XI. This has virtually no relevance because the same is not the basis of the initiation of any enquiry or otherwise. If the services of the petitioners were not worthy, a departmental enquiry ought to have been conducted and the petitioner after granting

opportunity of hearing could have been removed. But then respondent No. 5/6 did not act in the manner which was legally required to have been done. It has been further contended that respondent No. 6 has further referred to the powers vested in him by virtue of the MoU. Unfortunately, the provisions of the MoU shall not have any application on the petitioner because the petitioner was never a signatory to the said MoU. In fact, it was this MoU which was the cause of friction between the management and the petitioner. Despite the fact that the petitioner discharged his functions diligently, petitioner was harassed and was made to suffer all these days. The petitioner made a complaint before the Joint Director, Directorate of Public Instructions, also against the execution of the said MoU by the Principal and other members of the union. It has been further contended that there is no provision which would vest any power with the Principal to issue the order of termination and furthermore, there was no departmental enquiry before issuance of the impugned order of termination and would pray for allowing the writ petition.

13. Learned counsel for the petitioners in WP No. 285/1996 would submit that the petitioners have no hesitation to sign or accept the agreement dated 29.03.1995 subject to the condition that they would neither agree to pay 25% of their arrears to the said Union nor even would agree to pay 25% of the salary per month to the said Union to which they are entitled to receive from the respondents. He would further submit that the respondent management has already undertaken to carry out the welfare activity and for the purpose of achieving the goal of welfare activity, the management has already agreed to finance a huge amount towards the educational activities given by them. The

amount as such agreed and financed by the management has to be paid to all such persons involved in the welfare activity such as teaching job including the petitioners. He would further submit that the said union has no *locus standi* to raise alleged grievances of the teachers working with the respondents and to execute the settlement (Annexure P/5). Thus, he would submit that the management has not acted fairly and reasonably to recognize the said agreement. He would further submit that since respondent No.1 management is controlling the affairs of the said society, therefore, they should have directly paid the said amount rather than allowing to pay the said amount through a mediator of their own choice.

14. He would further submit that during pendency of the instant writ petition, petitioner No. 2-Anil Kumar Pandey stood retired in the month of October 2022, petitioner No. 3- Seshmani Sharma retired in the month of November 2012, petitioner No. 4-Vishnu Prashad Mishra has been retired in the year 2019 but so far as other employees are concerned they were terminated from service. He would further submit that petitioners No. 2, 3 & 4 cannot be denied full benefit of their salaries at par with similarly situated employees in as much as they have not signed the M.O.U. dated 29.03.1995. Hence if at any stretch of imagination it is found out that these petitioners are also bound by the M.O.U. then too the liability for the payment of their salaries as stipulated in the terms and conditions of the agreement has to be incurred and paid by respondent No. 1 company. He would further submit that there is difference between the case of petitioners No. 2 to 4 in comparison with other petitioners, except petitioner No. 2 to 4 as they were not terminated from service and they served with the school

till their retirement but the salary which was being paid to them was not at par with the other similarly situated employees of the educational institution and a very meager and poor amount was being paid as salary to the petitioners in pursuance of the interim order passed by this Hon'ble Court and as the terms and conditions of the M.O.U. which was signed by both the parties as an agreement but the entire liability as per bylaws of the societies and earlier stipulation of the terms and conditions between management and the society was not being incurred by respondent No. 1.

15. He would further submit that during pendency of the writ petition, the entire salary of the petitioners was withheld from October 2010 onwards meaning thereby the calculation has to be made separately unlike the other petitioners and the previous arrears of salary has to be calculated up-to the period of the salary and thereafter the entire salary has to be calculated after 2010 onwards till the actual date of entitlement of getting the salaries. He would further submit that even if the petitioners are not part of the M.O.U. still they are entitled to get salary at par with other teachers on the basis of similarly situated employees are entitled to get similar benefit. He would further submit that if this petition is not maintainable against the respondent/SECL then the Singhi Colliery Education Society is also a separate entity having its own sources of fund for running the institution is liable to make the payment of the arrears of the salaries and other monetary benefits whatsoever as per the bylaws and service rules applicable to the institutions can be directed to pay it off within the stipulated period but the Writ petition cannot be dismissed only on this count that it is not maintainable against the SECL because in view of the catena of

decisions of Hon'ble Apex Court, the society is amenable to the writ jurisdiction of this Hon'ble Court and the society itself is respondent No. 2 in this instant matter. Hence, the petitions should be allowed against the Singhi Colliery Education Society with suitable directions. So far as the numerous judgments referred to by the respondent company in various matters pertaining to Singhi Colliery Education Society is concerned in those matters the relief was not sought against the Singhi Colliery Education Society and in some of the matters the society itself was not a party, therefore those judgments are not applicable to the case of the petitioner and the liability with regard to grant of salary has to be borne by the Singhi Colliery Education Society, as such the claim of the petitioners is maintainable against the society and the mandamus can be issued against the society itself for redressal of the grievances of the petitioners.

16. Learned counsel for respondent/SECL would submit that there is no employee and employer relationship between the petitioners and the respondent No. 1 & 3. He would further submit that the SECL is providing financial assistance in the form of providing infrastructure to various institutions and local body as a part of welfare measure with an object to community development but they have no control over functioning of the society and it cannot be held that the society is being run and controlled by the SECL and would pray for dismissal of the writ petition. To buttress his submission, he would refer to the judgment rendered by Hon'ble the High Court as well as Supreme Court in case of **Ram Suresh Singh Vs. SECL & Others [WP No. 685/2006 (decided on 31.01.2019)]**, **Bharat Singh Baghel & others Vs. SECL & others [W.A. No. 33/2011 (decided on 26.08.2014)]**,

Jayant Kumar Shrivastava Vs. SECL [WPS No. 6298/2010 (decided on 15.01.2019)], Yog Mani Agnihotri & others Vs. State of Chhattisgarh & others [WA No. 431/2020 (decided on 12.10.2023)], Chairman-cum-Managing Director SECL Vs. Deleted (Smt. Bittan) & others [WA No. 421/2024 (decided on 08.07.2024)], Shiv Dayal Rai V. South Eastern Coal Fields Limited & others [WPS No. 1355/2011 (decided on 10.07.2024)] and would pray of dismissal of the writ petitions.

17. Learned counsel for the petitioner in WP No. 1675/2001 would submit that the action of respondents particularly of respondent No. 5 is illegal and arbitrary because respondent No. 5 is neither an appointing authority nor a disciplinary authority and even no approval from the competent authority has been obtained. As such, any notice or order issued by it and any action taken by it is *per-se* illegal, arbitrary and without jurisdiction. He would further submit that the impugned order dated 26.06.1996 has been issued on account of personal bias and malafide by Shri Raj Mani Tripathi, Principal, against the petitioner since the petitioner had personally made various complaints about the misdeeds committed by Shri Raj Mani Tripathi. He would further submit that the impugned order dated 26.06.1996 is a false, fabricated and concocted documents have been prepared belatedly and the said order was never issued against the petitioner and it is only later on that the Principal had fabricated the said documents to demonstrate as if the petitioner was terminated from his services and thus he would pray for allowing the instant writ petition.

18. This Court vide order dated 12.02.2025 in WP No. 285/1996 has directed the respondent/SECL to verify and file an affidavit whether as one time measure dispute can be settled between the parties by allowing them to execute undertaking in favour of the SECL as in past it has been done by the SECL.
19. In pursuance of the order passed by this Court, the respondent/SECL has filed its affidavit wherein it has been stated that during the pendency of the instant petition, the identical issue in respect of the employee and employer relationship between the Singhi Education Societies and the management of SECL has already been decided wherein it has been held that there is no employee and employer relationship between the Singhi Education Societies and the SECL management. It has been further stated that the petitioners are no more working in the school run by the societies and there is no possibility to enter the one time settlement with the petitioners, particularly when the management of SECL is already paying the financial assistance to the tune of Rs. 13,70,000/- as per MoU and would pray for dismissal of the writ petitions.
20. I have learned counsel for the parties and perused the documents placed on record with utmost satisfaction.
21. From the pleadings of the parties, the points emerged for determination of this Court are:-

“Point No. 1 : Whether there is employee and employer relationship between the petitioners and the respondent/SECL?

Point No. 2 : Whether WP No. 1675/2001 is liable to be dismissed on account of delay and latches?”

Discussion and finding on Point No. 1

22. To appreciate Point No. 1, it is expedient for this Court to go through the relevant clause of the understanding between the Union, teachers and the management of SECL (Annexure P/5) which read as under:-

“(1) The Management of SECL will pay a sum of Rs. 20,95,632.50 (Rupees twenty lakhs Ninety five thousand six hundred thirty two and paise fifty only) as ex:gratia payment on account of wages to the teachers from 1.8.1989 to 31.1.1995.

(3) The benefit of this understanding will only be given to those teachers who signs the memorandum of understanding subject to their satisfactory performance to be judged by the School Committee. It is noted that as per the MOU arrived at on 6th December, 1994, the Union and he teachers unconditionally withdraw the Contempt Petition i.e. MCC No. 344/94 as well as MP No. 3536/93.

(6) In case the financial assistance from the Management is sought for an amount exceeding Rs. 13 lakhs 70 thousand in any year, increase beyond the amount of Rs. 13 lakhs 70 thousand will be decided by the Management in consultation with the Union and the Principal.

(7) The Principal being the Head of the Institution will exercise all disciplinary powers in respect of teaching and non-teaching staff working in the Schools of the Singhi Colliery Education Society, Hasdeo Area, with the approval of the Chief General Manager/ Chairman of the Managing Committee.”

23. Learned counsel for the respondent No. 1 & 3/SECL has submitted that the petitioners are not the employees of the SECL but they are employees of the society which was vehemently objected by learned counsel for the petitioners and would submit that the petitioners are supervised and controlled by the SECL, therefore, the SECL is employer of the petitioners. The submission made by counsel for the petitioners deserves to be rejected as the petitioners have not produced any material on record to suggest that the SECL being employer has supervised and control over functioning of the petitioners or the petitioners are within the disciplinary control of the

SECL. It is well settled position of law that for claiming the employment the petitioner should have demonstrate that there is complete control and supervision of the SECL whereas the record demonstrates that the School is being managed and controlled by the society though some of the office bearers of the society, but unless and until the petitioners failed to establish that there is complete control and supervision, no inference can be drawn that the petitioners are employees of the SECL. The issue with regard to the employees of society financed by the National Aluminium Company claiming salary at part with the NALCO has come up for consideration before Hon'ble the Supreme Court in case of **National Aluminium Company Limited & others Vs. Ananta Kishore Rout & others [(2014) 6 SCC 756]** wherein Hon'ble the Supreme Court has held in paragraphs 21, 22, 35 & 36 as under:-

“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 the NALCO. It was so held by this Court in Chemical Works Limited (supra) way back in the year 1957. 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.*, and Another, “The proper test is whether or not the hirer had authority to control the manner of execution of the act in question.”

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35. We say at the cost of repetition that there is no parity in the nature of work, mode of appointment, experience, educational qualifications between the NALCO employees and the employees of the two schools. In fact, such a comparison can be made with their counter parts in the Government schools and/or aided or unaided schools. On that parameter, there cannot be any grievance of the staff which is getting better emoluments and enjoying far superior service conditions.

36. We thus, are of the opinion that the impugned judgment of the High Court is un-sustainable. Allowing these appeals, the judgment of the High Court is hereby set aside. There shall, however, be no order as to costs.”

24. The issue raised in this petition has also come up for consideration before this Court in case of **Ram Suresh Singh (supra), Bharat Singh Baghel (supra), Jayant Kumar Shrivastava (supra), Yog Mani Agnihotri (supra), Chairman-cum-Managing Director SECL (supra), Shiv Dayal Rai (supra)** wherein Hon'ble the Division Bench and the Single Bench of this Court have held that only by giving financial assistance by the SECL is not sufficient to establish the employee and employer relationship between the parties and accordingly, it has declined the relief to the petitioner.
25. Thus, it is quite vivid that the SECL is not the employer of the petitioners and there is no employee and employer relationship

between the petitioners, thus the petitioners are not entitled to get any relief against the SECL and the writ petition so far as SECL is concerned is liable to be dismissed and the petitioners are at liberty to claim relief against the Sanghi Colliery Education Society before appropriate forum. Thus, the writ petition is disposed of with the aforesaid liberty granted to them and **Point No. 1** is answered against the petitioners.

Discussion and finding on Point No. 2

26. The petitioner in WP No. 1675/2001 has challenged his termination order which has been passed on 26.06.1996 after lapse of 5 years of termination. Earlier when the petition was filed on 28.08.2001, it has been stated that by oral order his services have been terminated and subsequently application for amendment was moved in the writ petition on 01.11.2011 where the prayer for setting aside the order dated 26.06.1996 was sought. The said amendment was allowed by this Court on 24.11.2011 after 15 years of termination. Even no explanation was given by the petitioner for preferring the writ petition in the initial stage after delay of five years and for moving application for amendment challenging termination order after 15 years, as such the writ petition suffers from delay and laches. It is well settled position of law that though there is no limitation of filing of the writ petition but the same should be filed expeditiously and if there is delay, proper explanation should be submitted but in any case, it should not be inordinate delay.
27. From the records, no explanation was given by the petitioner and even the respondents have filed return on 20.03.2002 wherein they have

annexed the copy of termination order dated 26.06.1996 and the amendment was sought after nine years though incorporated in the writ petition but the same cannot be given retrospective effect to justify the delay of filing the petition in the year 2001 as the retrospective application of an amendment could potentially affect vested right or obligation that were established prior to the amendment. The retrospective effect would be unfair and would violate the provisions of law, therefore, though the amendment which was allowed by this Court but cannot condone the delay in challenging the same. Considering the well settled position of law that though the provisions of C.P.C. are strictly not applicable in the writ petition but the basic principles of C.P.C., are applicable in the writ petition. Considering this aspect of the matter, the retrospective amendment challenging the termination order cannot be assailed in this petition.

28. Hon'ble the Supreme Court has also considered the effect of retrospective amendment in case of **North Eastern Railway Administration, Gorakhpur Vs. Bhagwan Das (Dead) by Lrs. [(2008) 8 SCC 511]** and has held in paragraph 16 as under:-

“15. Insofar as the principles which govern the question of granting or disallowing amendments under Order 6 Rule 17 C.P.C. (as it stood at the relevant time) are concerned, these are also well settled. Order 6 Rule 17 C.P.C. postulates amendment of pleadings at any stage of the proceedings. In *Pirgonda Hongonda Patil Vs. Kalgonda Shidgonda Patil & Ors.* which still holds the field, it was held that all amendments ought to be allowed which satisfy the two conditions: (a) of not working injustice to the other side, and (b) of being necessary for the purpose of determining the real questions in controversy between the parties. Amendments should be refused only where the other party cannot be placed in the same position as if the pleading had been originally correct, but the amendment would cause him an injury which could not be compensated in costs.

(Also see: Gajanan Jaikishan Joshi Vs. Prabhakar Mohanlal Kalwar).

29. As such, the writ petition from very beginning suffers from delay and laches and even the amendment is delayed of 15 years which has no retrospective effect, therefore, the writ petition deserves to be dismissed on the count of delay and laches as delay defeats equity. Accordingly, **Point No. 2** is also answered against the petitioner.
30. Hon'ble the Supreme Court in case of **Mrinmoy Maity Vs. Chhanda Koley & others [2024 LiveLaw (SC) 318]** has considered the issue of delay in filing the petition and has held in paragraph 12 as under:-

“12. It is apposite to take note of the dicta laid down by this Court in Karnataka Power Corporation Ltd. and another v. K. Thangappan and another, (2006) 4 SCC 322 whereunder it has been held that the High Court may refuse to exercise extraordinary jurisdiction if there is negligence or omissions on the part of the applicant to assert his right. It has been further held thereunder:

“6. Delay or laches is one of the factors which is to be borne in mind by the High Court when they exercise their discretionary powers under Article 226 of the Constitution. In an appropriate case the High Court may refuse to invoke its extraordinary powers if there is such negligence or omission on the part of the applicant to assert his right as taken in conjunction with the lapse of time and other circumstances, causes prejudice to the opposite party. Even where fundamental right is involved the matter is still within the discretion of the Court as pointed out in Durga Prasad v. Chief Controller of Imports and Exports [(1969) 1 SCC 185 : AIR 1970 SC 769]. Of course, the discretion has to be exercised judicially and reasonably.

7. What was stated in this regard by Sir Barnes Peacock in Lindsay Petroleum Co. v. Prosser Armstrong Hurd [(1874) 5 PC 221 : 22 WR 492] (PC at p. 239) was approved by this Court in Moon Mills Ltd. v. M.R. Meher [AIR 1967 SC 1450] and Maharashtra SRTC v. Shri Balwant Regular Motor Service [(1969) 1 SCR 808 : AIR 1969 SC 329]. Sir Barnes had stated:

“Now, the doctrine of laches in courts of equity is not an arbitrary or a technical doctrine. Where it would be practically unjust to give a remedy either because the party has, by his conduct

done that which might fairly be regarded as equivalent to a waiver of it, or where by his conduct and neglect he has though perhaps not waiving that remedy, yet put the other party in a situation in which it would not be reasonable to place him if the remedy were afterwards to be asserted, in either of these cases, lapse of time and delay are most material. But in every case, if an argument against relief, which otherwise would be just, is founded upon mere delay, that delay of course not amounting to a bar by any statute of limitation, the validity of that defence must be tried upon principles substantially equitable. Two circumstances always important in such cases are, the length of the delay and the nature of the acts done during the interval which might affect either party and cause a balance of justice or injustice in taking the one course or the other, so far as it relates to the remedy.”

8. It would be appropriate to note certain decisions of this Court in which this aspect has been dealt with in relation to Article 32 of the Constitution. It is apparent that what has been stated as regards that article would apply, a fortiori, to Article 226. It was observed in *Rabindranath Bose v. Union of India* [(1970) 1 SCC 84 : AIR 1970 SC 470] that no relief can be given to the petitioner who without any reasonable explanation approaches this Court under Article 32 after inordinate delay. It was stated that though Article 32 is itself a guaranteed right, it does not follow from this that it was the intention of the Constitution-makers that this Court should disregard all principles and grant relief in petitions filed after inordinate delay.

9. It was stated in *State of M.P. v. Nandlal Jaiswal* [(1986) 4 SCC 566 : AIR 1987 SC 251] that the High Court in exercise of its discretion does not ordinarily assist the tardy and the indolent or the acquiescent and the lethargic. If there is inordinate delay on the part of the petitioner and such delay is not satisfactorily explained, the High Court may decline to intervene and grant relief in exercise of its writ jurisdiction. It was stated that this rule is premised on a number of factors. The High Court does not ordinarily permit a belated resort to the extraordinary remedy because it is likely to cause confusion and public inconvenience and bring, in its train new injustices, and if writ jurisdiction is exercised after unreasonable delay, it may have the effect of inflicting not only hardship and inconvenience but also injustice on third parties. It was pointed out that when writ jurisdiction is invoked, unexplained delay coupled with the creation of third-party rights in the meantime is an important factor which also weighs with the High Court in deciding whether or not to exercise such jurisdiction”.

31. Consequently, **WP No. 285/1996** is **dismissed** so far as respondent No. 1 & 3/SECL is concerned. However, liberty is granted to the petitioners to take recourse available to them under the Societies Act, 1960 against the respondent No. 2/Society, if so advised. So far as **WP No. 1675/2001** is concerned, the same is also **dismissed** on the count of delay and latches.

Sd/-
(Narendra Kumar Vyas)
Judge