

DR. S.K. KHANNA AND ORS. ETC. ETC.

v.

STATE OF HARYANA AND ORS. ETC. ETC.

NOVEMBER 5, 1993.

[MADAN MOHAN PUNCHHI AND YOGESHWAR DAYAL, JJ.]

Service Law—Lecturers in private college—Promoted as senior Lecturers—Recommendation of University Grants Commission—Revision of and uniformity in Pay Scales—Merger into one cadre with retrospective effect—Promotion orders after the merger cancelled as infructuous—College taken over by Government along with entire staff—Regularisation and absorption as Lecturers—Whether amounts to demotion—Representation to Government claiming status as senior Lecturers—Rejection by Government—Validity of.

These appeals were filed by some candidates who were appointed as Lecturers in a private college and thereafter promoted as Senior Lecturers under the University Grants Commission Scheme. In 1976, the Commissioner and Secretary to the Government wrote to the Director of Public Instructions to the effect that there was to be only one grade for Lecturers. Both the grades of Senior and Junior Lecturers as well as the grade of Lecturers (Selection Grade) were made into one grade of Lecturers on a pay scales of Rs. 700-1600.

In view of the aforesaid revision and the uniformity in pay-scales in accordance with the recommendations of the University Grants Commission, the pay-scales were revised with effect from 1.1.1973. Consequent upon the said changes, the question of promotion from one category (Lecturer) to another i.e. (Senior Lecturer) had been done away with, effective from 1.1.1973, that is, with retrospective effect and certain promotion orders issued in 1974 came to be cancelled as infructuous. The cancellation of promotion was in relation to various Lecturers - some in private colleges but mostly in Government Colleges. The College in which some of the candidates were working was taken over in 1974 by the State Government, and the services of the entire staff were placed at the disposal of the Government and their services were regularised in 1980. Representation was made to the Government against the order issued in 1980

A by which the rank of the erstwhile Lecturers promoted as Senior Lecturers was allegedly reduced to that of Lecturers. The Government rejected the representation. Thereafter the promoted Senior Lecturers filed a suit claiming their status as Senior Lectures.

B The trial court held that the plaintiffs had no cause of action and the suit was not maintainable. It also held that since the plaintiffs were appointed Lecturers and joined as such, they were estopped from raising any contention that they were appointed as Senior Lecturers and that they were entitled to continue as Senior Lecturers. The plaintiffs preferred an appeal and the lower appellate court allowed the same and held that the
C plaintiffs had to be treated as new entrants in the cadre of Senior Lectures. Accordingly, it set aside the judgment of the trial court.

The appeal preferred by the State Government was dismissed by the High Court. On appeal, by special leave.

D This court allowed the appeals, and

HELD : 1. The plaintiffs had knowingly accepted the offer for appointment as Lecturers and the order of appointment dated 14th March, 1980 is merely an order of regularisation in consultation with the Public Service Commission and, therefore, it cannot be called an order of demotion. There is no right in the plaintiffs, who were working as Senior Lecturers in the erstwhile private institutions, to be absorbed as Senior Lecturers when the institution is taken over by the Government. There could be no promotion from Lecturer to Senior Lecturer after 1st January, 1973 either in Government colleges or private colleges in view of the order
E of the Governor, dated 21st September, 1976 which came to be effective retrospectively from 1.1.1973. [657-A-B]
F

2. As regards the seniority list maintained by the Government in respect of the Senior Lecturers, it should not be forgotten that promotion from Lecturer to Senior Lecturer had been done away with effect from the 1st January, 1973, and if there were Senior Lecturers promoted from Lecturers before that date, there is bound to be a separate list of them. That does not mean that the erstwhile Senior Lecturers who could not be Senior Lecturers after 1st January, 1973 could claim to join that list at any place. The reasons are two. Firstly, as per the orders of the Governor
G there could not be any promotion from Lecturer to Senior Lecturer after
H

1st January, 1973. Both the plaintiffs had been promoted after that date - one in January and another in November, 1973. Secondly, the seniority or otherwise in Government service has to be seen in respect of the post a person is holding. Initially, the plaintiffs were appointed for six months as Lecturers. Their services were regularised as Lecturers. Therefore, there was no question of their names coming into the list of Senior Lecturers. In fact it is apparent that the plaintiffs knew of their problem and that is why they requested the Chief Minister for a new cadre of Lecturers or Senior Lecturers of erstwhile private colleges. Therefore, neither there is any demotion of the plaintiffs nor was the order of the Government rejecting the representation could have been quashed. The whole suit was misconceived. It disclosed no cause of action whatsoever and the trial court rightly dismissed the suit. The lower appellate court and the High Court totally misconceived the facts. [657-C-G]

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 3947 of 1990 etc. etc.

From the Judgment and Order dated 29.11.88 of the Punjab and Haryana High Court in R.S.A. No. 2455 of 1987.

Govind Mukhoty, Naresh Kaushik, Ms. Lalita Kaushik and Shankar Divate for the Appellants.

Ms. Nisha Bagchi, Ms. Indu Malhotra and G.K. Bansal for the Respondents.

The Judgment of the Court was delivered by

YOGESHWAR DAYAL, J. Leave granted in Special Leave Petition (Civil) No. 4702 of 1990.

This order will dispose of Civil Appeals 3947 of 1990; 4091 of 1991 and Civil Appeal arising out of SLP (C) No. 4702 of 1990.

It appears that Civil Suit No. 215 of 1981 was instituted by three persons, namely - Bant Rai Gupta, O.P. Khosla and R.K. Jain, all Lecturers of Government National College, Sirsa against the State of Haryana through its Secretary, Education Department and Director, Higher Education, Haryana. The Plaintiffs sought declaration that they were entitled to continue as Senior Lecturers and the order dated 2nd July, 1980 rejecting

- A the representation of the plaintiffs and also the order dated 24th October, 1980 reducing the plaintiffs in rank from Senior Lecturers to Lecturers were illegal, wrong, null and void and were liable to be set aside.

- B Before we deal with the averments on the basis of which the aforesaid declaration was sought, it may be useful to mention that the plaintiffs had submitted a representation to the Chief Minister of Haryana requesting the Government that their seniority should be fixed amongst the Senior Lecturers working in Government Colleges. They also requested that a new cadre be constituted for Lecturers and Senior Lecturers of the taken over private colleges. On receipt of this representation, the Directorate of Education informed the Principal, Government National College, Sirsa that the plaintiffs had been appointed Lecturers as there was no provision in the University Grants Commission's grades for the appointment of Senior Lecturers, as such their demands were rejected vide letter dated 2nd July, 1980.

- D It is thus clear from the aforesaid that the order dated 2nd July, 1980 was the order whereby the Haryana Government declined to form a new cadre for Lecturers and Senior Lecturers for the taken over Colleges and also declined to treat the plaintiffs as Senior Lecturers.

- E Briefly stated, the facts of the case are that the plaintiffs were promoted as Senior Lecturers in the National College, Sirsa and thereafter were promoted as Senior Lecturers under the University Grants Commission Scheme. The plaintiffs R.K. Jain and Bant Rai Gupta were appointed as Senior Lecturers in the National College Sirsa a private institution on 11th January, 1973 and 1st November, 1973 respectively.

- F It appears letter No. 765-Edu.1 (1) 76/3535 dated 27th January, 1976 was sent by the Commissioner and Secretary to Government of Haryana, Education Department, to the Director of Public Instructions, Haryana, Chandigarh and copies thereof endorsed to the Principals of all Government/ Non- Government Colleges in existence on 1st January 1975. It was communicated that there was only be one grade for Lecturers whether of junior grade or senior grade. The erstwhile Junior Lecturers' grade was 300-600 whereas Senior Lecturers' grade was 400-800. Both these grades as well as the grade of Lecturers (Selection Grade) were made into one grade of Lecturers and it was fixed at 700-40-1100-EB-50- 1300-Assess-

ment-50-1600. In short the grade was 700-1600. In view of the aforesaid revision and uniformity in the pay-scales in accordance with the recommendations of the University Grants Commission, the pay-scales were revised with effect from 1st January, 1973. The Governor of Haryana also issued an order dated 21st September, 1976 to the effect that consequent upon the above changes, the question of promotion from one category (Lecturer) to another (Senior Lecturer) had been done away with retrospective effect i.e. 1st January, 1973 and the Governor, Haryana, in consultation with the Haryana Public Service Commission, cancelled the promotion orders issued vide Haryana Government No. 2142/Edu. I-(1)-74/7781 dated 14th March, 1974 and 5896-Edu.I(1)-76/24346 dated 7th August, 1974 being infructuous as per enclosed annexure. The cancellation of promotion was in relation to various Lecturers - some in private colleges but mostly in Government colleges.

The erstwhile College where plaintiffs were serving was taken over on 22nd January, 1979 by the Government and was re-named as "Government National College, Sirsa."

It was the case of the plaintiffs that as the College was taken over by the Government, the services of the entire staff including the plaintiffs were placed at the disposal of the Government by the Management and as such the defendants issued the appointment letters dated 22nd January, 1979 wherein the status of the plaintiffs as regular Senior Lecturers was conceded and this fact was further corroborated when the services of the plaintiffs were regularised by the defendants vide letter dated 14th March, 1980. It was pleaded that vide letter dated 14th June, 1980 the Government substituted the words 'Lecturer' in place of 'Senior Lecturer' and also informed the plaintiffs that their representation for continuation of Senior Lecturers had been rejected by letter dated 2nd July, 1980. The letter dated 24th October, 1980 reducing the rank of the plaintiffs from Senior Lecturers to Lecturers was challenged on the ground that there was a separate distinct living cadre of the Lecturers and of the Senior Lecturers since long and as such their seniority should be fixed alongwith the Senior Lecturers. It was pleaded that the orders were malacious and violate Articles 14, 16, 309 and 311 of the Constitution of India as by the operation of the impugned orders the plaintiffs would be deprived of their chances of promotion and lastly it would adversely effect the pension of the plaintiffs.

- A A registered notice was given to the defendants but the same remained unreplyed.

B The defendants appeared and contested the suit through their written statement filed on 11th January, 1982. The defendants in the suit admitted that the College was taken over by the defendants but denied other allegations. The defendants, however, admitted that the services of the staff of the erstwhile private college was placed at the disposal of the Government by the Management of National College, Sirsa, but pleaded that the College was taken over on the condition that the staff of the College will be treated as new entrants and subject to the approval of

C Haryana Public Service Commission / Subordinate Services Selection Board, Haryana and in the letter dated 21st November, 1978 whereby the College was taken over, it was clearly stated that the members of the staff of their College who will be considered suitable for absorption in the Government services shall be treated as new entrants. It was further

D pleaded that on 22nd January, 1979 the staff of the College was appointed purely on *ad hoc* basis for a period of six months or till the approval of the Haryana Public Service Commission to their regular absorption in the Education Department and as such no question arose regarding considering the status of the plaintiffs. It was further pleaded in the written statement that the plaintiffs were appointed as Lecturers (fresh entrants) and their services were regularised after obtaining the approval of the

E Haryana Public Service Commission as Lecturers only and hence no question of there being 'Senior Lecturers' arose. It was further pleaded that after the acceptance of offer as Lecturer by the plaintiffs, they submitted their joining reports in which they themselves mentioned their post as

F 'Lecturer'. The defendants specifically pleaded that the services of the plaintiffs were regularised after obtaining the approval from Haryana Public Service Commission though they were addressed as Senior Lecturers in the address only, on the basis of the list submitted by the Management, but in this very letter it was expressly made clear that the plaintiffs were appointed as 'Lecturer' only and the plaintiffs had mis-interpreted this letter of 14th March, 1980. The defendants denied that they

G had reduced the rank of the plaintiffs or that the principles of natural justice had not been followed.

H The trial court by order dated 9th February, 1982 framed the following issues :—

ISSUES :

1. Whether the impugned order dated 2.7.1980 rejecting the representation of the plaintiff and order No. 3/4-79/E (i) dated nil reducing the plaintiffs in rank from Senior Lecturer to Lecturer is invalid illegal unable to set aside? OPP. A
2. Whether the suit is not maintainable in the present form ? OPD. B
3. Whether the suit is bad for non-joinder of necessary parties? OPD. C
4. Whether the plaintiffs have got cause of action? OPD.
5. Whether the civil court has no jurisdiction? OPD.
6. Whether the plaintiffs are estopped from filing the suit? OPD. D
7. Whether the suit has not been properly valued? OPD.
8. Whether the civil court at Sirsa has got no jurisdiction to try the suit? OPD.
9. Relief." E

The trial court after considering the entire evidence and the record, on issued No. 1, took the view that the impugned order dated 2nd July, 1980 rejecting the representation of the plaintiffs and the appointment order of the plaintiffs dated 14th March, 1980 were legal and valid. On issue Nos. 2 and 4 the trial court held that the plaintiffs had not challenged the order of the Government's taking over the College and they were specifically appointed as Lecturers by order dated 14th March, 1980 and are bound by the agreement mentioned in the appointment letter dated 14th March, 1980. Thus the plaintiffs had no cause of action and the suit in the present form was also not maintainable as the plaintiffs were appointed as Lecturers and not as Senior Lecturers and thus issue Nos. 2 & 4 were also decided against the plaintiffs. F G

On issue No. 3 the trial court took the view that the suit was bad for non-joinder of or necessary parties. It took the view that other Lecturers of the College who were absorbed in Government service alongwith the H

- A plaintiffs were not the parties to the suit and as the decision of the suit would likely to effect them, the present suit is bad for non-joinder of necessary parties. Issue Nos. 5, 7 and 8, however, were found in favour of the plaintiffs and it was held that the suit had been properly valued and the civil court had the jurisdiction to entertain the same. On issue No. 6
- B the trial held that the plaintiffs were appointed as per order dated 14th March, 1980 as Lecturers and they also joined their services as Lecturers (vide joining reports Ext. D-4 to D- 6) and are therefore estopped from raising contention that they were appointed as Senior Lecturers. Since the plaintiffs were appointed Lecturers and joined as such, they are estopped from raising any contention that they were appointed as Senior Lecturers
- C or are entitled to continue as Senior Lecturers. In view of these findings, the trial court dismissed the suit.

- The plaintiffs being aggrieved by the order of the trial court took up the matter in appeal before the Additional District Judge, Sirsa. During
- D the hearing of the appeal it was submitted on behalf of the plaintiffs that they were appointed as Lecturers in National College, Sirsa, which used to be run by the Sirsa Education Society and in due course, were promoted as Senior Lecturers in the higher pay scale of 400-800. Thereafter, on 22nd January, 1979 the College was taken over by the Government and services
- E of the entire staff, including them, were placed at the disposal of the Government and in course of time their services were regularised and their status as Senior Lecturer was conceded in the letter of appointment dated 22nd January, 1979. Even in the letter of 14th March, 1980, when their services were regularised, they were addressed as Senior Lecturers. However, by another letter of 14th June, 1980, they were designated only as
- F Lecturers and even their representation for continuation as Senior Lecturers was rejected vide letter dated 2nd July, 1980. It was pleaded that when the College was taken over it was made clear that the entire staff shall be adjusted in the equivalent/identical/higher scale. Consequently, the Principals were adjusted as Principals, Lecturers as Lecturers,
- G Demonstrators as Demonstrators and so on and so forth and since they were already working as Senior Lecturers, they were entitled to be adjusted as such. It was also urged on their behalf that 42 Senior Lecturers were confirmed vide order dated 9th August, 1980 which means that there was a distinct living cadre of Senior Lecturers and that they had also taken oath
- H as Senior Lecturers.

The lower appellate court noticed the evidence and took the view that much before the taken over of the College on 22nd January, 1979, the appellants before it were working as Senior Lecturers and were in the revised U.G.C. scale of 700-1600 and at the time of taking over of the College, they were holding the permanent posts of Senior Lecturer. The lower appellate court felt that the only dispute which was to be resolved was whether at the time of taking over the College by the Government, they were entitled to be adjusted as Senior Lecturers or not. The lower appellate court noticed the orders of the Haryana Government dated 27th January, 1976 as well as of the Governor of Haryana dated 21st September, 1976 and took the view that the question of promotion from one category (Lecturer) to another (Senior Lecturer) was done away with retrospective effect i.e. 1st January, 1973 and the scales of College Lecturer and Senior Lecturer were amalgamated and only one pay scale was formed and the distinction between the scales of Lecturer and Senior Lecturer disappeared. It, however, took the view that since the gradation list of the year 1981 as well as of the years 1984 and 1986 made it abundantly clear that 20 Lecturers are still being shown as Senior Lecturers in the same, which means that either those orders were not implemented or later on they were withdrawn and that the cadre of Senior Lecturers still exists. Therefore, it does not lie in the mouth of the defendants/respondents before it to plead that the plaintiffs/appellants could not be adjusted as Senior Lecturers. The lower appellate court agreed with the respondents before it that the plaintiffs had to be treated as new entrants but in the cadre of Senior Lecturers and accordingly set aside the judgment of the trial court and passed a decree for declaration, in favour of the plaintiffs/appellants and against the defendants/respondents to the effect that the plaintiffs were entitled to be appointed as Senior Lecturers though in that category they might be treated as new entrants which means that they should not be entitled to claim seniority over other Senior Lecturers, who were previously working as such.

The matter was taken in appeal on behalf of the Government of Haryana to the High Court as second appeal but that appeal was dismissed by the High Court whereupon the State filed Special Leave Petition and this Court remanded the second appeal to the High Court for re-hearing alongwith Writ Petition No. 2310 of 1987 *R.K. Sehgal and Others. v. The State of Haryana and Other*. This writ petition had been filed by certain other Lecturers contending that the decision of the High Court given

A earlier in R.S.A. was not binding on them as they were not parties to the suit. The High Court, after hearing the R.S.A. as remanded by this Court alongwith the writ petition, dismissed both of them.

B Civil Appeal No. 3947 of 1990 and Civil Appeal arising out of S.L.P. (C) 4702 of 1990 is against the order of the High Court dated 20th November, 1988 passed in the writ petition as well as in the R.S.A. Civil Appeal No. 4091 of 1991 is against the judgment of the High Court dated 27th February, 1991 which was passed following the aforesaid order of the High Court dated 20th November, 1988.

C It appears to us that the lower appellate court and the High Court totally misconceived the position both on law and facts. It is clear from Notification dated 27th January, 1976 and the order of the Governor of Haryana dated 21 September, 1976 that the distinction between the Junior Lecturers, Senior Lecturers and Lecturers (Selection Grade) had been done away there was only one grade of Lecturers w.e.f. 1st January, 1973.

D It is again clear from the order of the Governor of Haryana that the question of promotion from one category to another had been done away with retrospective effect i.e. from 1st January, 1973. This was the position when the private institution was taken over by the Government vide order No. 23/6/78/Edu.1(2) dated 21st November, 1978. It is clear from paragraph

E 2 thereof that the Haryana Government had sanctioned the taken over of the National College, Sirsa, on the terms and conditions mentioned *inter alia* in paragraph 2 sub-paragraphs (ii) and (viii). Sub-paras (ii) and (viii) read thus :

F "(ii) Such members of the Staff on this college as are considered suitable for absorption in Government/Service by the Haryana Public Service Commission/Haryana Subordinate Services Selection Board shall be treated as new entrants. Only Government scales of pay of respective categories shall

G be allowed to them and there shall be no personal grace for any one. Their pay in the Government scales will be fixed on the basis of length of service with equivalent/identical or higher time scales. There shall be no guarantee in regard to protecting their existing salaries."

H

(viii) "The staff, subject to their suitability may be appointed temporarily, for a period of six months. Their absorption on regular basis shall however, be subject to the condition laid down in sub-para 2(ii) above." A

It is clear from sub-para (viii) of paragraph 2 that initially, subject to suitability, the staff may be appointed temporarily for six months and their regularisation is subject to the conditions mentioned in sub-para (ii) of paragraph 2. Sub-para (ii) clearly contemplates that only the staff who are considered suitable for absorption in Government/Service by Haryana Public Service Commission/Haryana Subordinate Services Selection Board and are selected shall be treated as "new entrants". B C

It is thus clear that when the plaintiffs were appointed, they were new entrants in service and it is also clear from their letters of appointment that the Government was pleased to appoint them in consultation with the Haryana Public Service Commission as Lecturers in an officiating capacity in the scale of 700-10- 1100/50-1300-assessment-50-1600 on the terms and conditions mentioned therein. It is mentioned in this letter of appointment dated 14th March, 1980 that the plaintiffs will be on probation for a period of two years unless and until the plaintiffs are appointed against permanent vacancies and that their seniority will be fixed in accordance with the departmental orders. D

Admittedly the plaintiffs had joined as Lecturers on 22nd January, 1979. Learned counsel for the plaintiffs relied upon Ext. D-13 which is or 'y a covering letter to the order of appointment of individual plaintiffs as Lecturer in consultation with the Haryana Public Service Commission i.e. order dated 14th March, 1980. It does not talk of any reduction in rank from Senior Lecturer to Lecturer. In fact it conveys that on taking over of the National College, Sirsa, by the Government, the Government of Haryana in consultation with the Haryana Public Service Commission is pleased to appoint the plaintiffs as Lecturers in officiating capacity in the scale mentioned earlier where plaintiffs Bant Rai Gupta and O.P. Khosla were mentioned as Senior Lecturers in Hindi and English respectively while conveying the order dated 14th March, 1980. The idea was to convey the order to right persons and not to confer the status of Senior Lecturer. We may mention that initially the plaintiffs had joined as Lecturers on taken over on or about 22nd January, 1979 and the Joining reports of both - Bant Rai Gupta and Rajinder Kumar Jain are reproduced hereunder:— E F G H

A

"To

The Principal,
Government College, Sirsa,

Jan. 22, 1979.

B

Sub: Joining Report.

Dear Sir,

This has reference to your appointment letter Endst. No. 4/40-79-C.I(1) dated Chandigarh (Camp Sirsa) 22.1.1979 from D.D.D.P.I. Haryana.

C

Respectfully, I beg to join duty as lecturer in Hindi today forenoon, i.e., with effect from 22.1.1979.

Thanking you,

D

Yours faithfully,
Sd/
(Bant Rai Gupta)
22.1.1979"

E

"To,

The Principal,
Government College, Sirsa.

Jan. 22, 1979

F

Dear Sir,

Ref. Haryana Government letter No. 23/6/78- Edu.I(2) dated 21.11.1978, I report for duty with effect from 22.1.1979 (forenoon)

This is for your kind information and record.

G

Your faithfully,

Sd/
(Rajinder Kumar Jain)
Lecturer in English
Govt. College, Sirsa"

H

The plaintiffs had knowingly accepted the offer for appointment as Lecturers and the order of appointment dated 14th March, 1980 is merely an order of regularisation in consultation with the Haryana Public Service Commission and therefore it cannot be called an order of demotion. There is no right in the plaintiffs, who were working as Senior Lecturers in the erstwhile private institution to be absorbed as Senior Lecturers when the institution is taken over by the Government. As we have noticed, there could be no promotion from Lecturer to Senior Lecturer after 1st January, 1973 either in Government colleges or private colleges in view of the order of the Governor, Haryana dated 21st September, 1976 which came to be effective retrospectively from 1.1.1973.

Coming to the so called seniority list being maintained by the Government in respect of the Senior Lecturers, it should not be forgotten that promotion from Lecturer to Senior Lecturer had been done away with effect from 1st January, 1973. If there were Senior Lecturers promoted from Lecturers before that date, there is bound to be a separate list of them but that does not mean that the erstwhile Senior Lecturers who could not be Senior Lecturers after 1st January, 1973 could claim to join that list at any place. The reason are two. Firstly as per the orders of the Governor there could not be any promotion from Lecturer to Senior Lecturer after 1st January, 1973. Both the plaintiffs had been promoted after that date - one in January and another in November, 1973. Secondly the seniority or otherwise in Government service has to be seen in respect of the post a person is holding. Initially the plaintiffs were appointed for six months as Lecturers. Their services were regularised as Lecturers. Therefore, there was no question of their names being coming into the list of Senior Lecturers. In fact it is apparent that the plaintiffs knew of their problem that is why they requested the Chief Minister for a new cadre of Lecturers or Senior Lecturers of erstwhile private colleges. Therefore neither there is any demotion of the plaintiffs nor was the order of the Government rejecting the representation could have been quashed. The whole suit was misconceived. It disclosed no cause of action whatsoever and we are surprised that the lower appellate court and the High Court totally misconceived the facts.

The result is that Civil Appeal No. 3947 of 1990 and Civil Appeal arising out of S.L.P. (C) No. 4702 of 1990 are accepted. The judgments of the High Court and the lower appellate court set aside and the judgment

A of the trial court dated 17th February, 1983 is restored. As the judgment under appeal in Civil Appeal No. 4091 of 1991 dated 27.2.1991 passed in Civil Writ Petition No. 8617 of 1988 is also based on the aforesaid judgment of the High Court in Civil Appeal No. 3947 of 1990, for the reasons aforesaid the same is also set aside and the writ petition is dismissed.

G.N.

Appeal allowed.