

A HIMACHAL ROAD TRANSPORT CORPORATION & ANR.

v.

HIMACHAL ROAD TRANSPORT CORPORATION RETIRED
EMPLOYEES UNION

B (Civil Appeal No. 7230 of 2012)

FEBRUARY 22, 2021

**[ASHOK BHUSHAN, R. SUBHASH REDDY AND
M.R. SHAH, JJ.]**

- C *Pension: Fixation of cut-off date for implementing pension scheme – Whether discriminatory – Employees of the appellant Corporation were governed by the Contributory Provident Fund Scheme – Appellant Corporation introduced Pension scheme in the year 1995 – Cut-off date for implementation of pension date was fixed as 5.6.1995 that is from the date on which Scheme was approved by the Cabinet/Government – Plea of respondent-Union that the fixation of cut-off date was arbitrary and discriminatory – Held: Employees of the appellant-corporation who were governed by the Contributory Provident Fund Scheme and retired prior to 5.6.1995 and the employees of the appellant Corporation, who were in service and continued after 5.6.1995, cannot be treated as a homogeneous class – Retired employees, who were governed by the Contributory Provident Fund Scheme, on their retirement had already received the benefits of such Scheme, and constituted different class than those employees who were in service as on 5.6.1995 – It is always open for the employer to introduce new Schemes and benefits, having regard to financial health of the employer – Whenever such new benefit is extended for the existing employees, retired employees cannot seek such benefit, merely on the ground that they too were the former employees of the Corporation – When the members of the respondent-Union retired, there was no Pension Scheme at all – They were merely governed by the Contributory Provident Fund Scheme and, on retirement, they were already granted the benefit of such Scheme – In that view of the matter, retired employees cannot question the cut-off date fixed for grant of Pension Scheme.*

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Allowing the appeal, the Court

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HELD: 1. All the members of the respondent-Union, while in service, were governed by Contributory Provident Fund Scheme. All those employees who retired before 05.06.1995, were paid all retiral benefits, applicable to them. As the Pension Scheme was not in existence during the relevant time, it was not the case of violation of any service conditions either. The Pension Scheme is introduced by way of notification dated 06.10.1995, by giving effect from 05.06.1995, on which date the Cabinet has approved the Scheme. The employees who were governed by the Contributory Provident Fund Scheme and retired prior to 05.06.1995 and the employees who were in service and continued after 05.06.1995, of the appellant Corporation, cannot be treated as a homogeneous class. The retired employees, who were governed by the Contributory Provident Fund Scheme, on their retirement had already received the benefits of such Scheme, constitute different class than those employees who were in service as on 05.06.1995. [Para 19][113-D-G]

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State of Rajasthan and Another v. Amrit Lal Gandhi and others (1997) 2 SCC 342 : [1997] 1 SCR 121 – relied on.

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Union of India and another v. Deoki Nandan Aggarwal 1992 Supp. (1) SCC 323 : [1991] 3 SCR 873; Subrata Sen and others v. Union of India and others (2001) 8 SCC 71 : [2001] (3) Suppl. SCR 140 – held inapplicable.

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D.S. Nakara & Ors. v. Union of India (1983) 1 SCC 305 : [1983] 2 SCR 165; State of Punjab v. Amar Nath Goyal (2005) 6 SCC 754 : [2005] 2 Suppl. SCR 549; Govt. of Andhra Pradesh & others v. N. Subbarayudu & others (2008) 14 SCC 702 : [2008] 5 SCR 522; Suchet Singh Yadav and others v. Union of India and others (2019) 11 SCC 520; All Manipur Pensioners Association by its Secretary v. The State of Manipur and others (2019) 9 SCALE 282 : [2019] 9 SCR 905; R.L Marwaha

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- A *v. Union of India and others* 1987(4) SCC 31: [1987] 3 SCR 928 –referred to.

| <u>Case Law Reference</u> | | | |
|---------------------------|--|-------------------|---------|
| | [1987] 3 SCR 928 | referred to | Para 15 |
| B | [1991] 3 SCR 873 | held inapplicable | Para 15 |
| | [2001] 3 Suppl. SCR 140 | held inapplicable | Para 15 |
| | [1983] 2 SCR 165 | referred to | Para 16 |
| | [2005] 2 Suppl. SCR 549 | referred to | Para 16 |
| C | [2008] 5 SCR 522 | referred to | Para 17 |
| | (2019) 11 SCC 520 | referred to | Para 18 |
| | [2019] 9 SCR 905 | referred to | Para 18 |
| | [1997] 1 SCR 121 | relied on | Para 20 |
| D | CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7230 of 2012 | | |
| | From the Judgment and Order dated 8.1.2009 of the High Court of Himachal Pradesh at Shimla in Civil Writ Petition No. 1362 of 2001 | | |
| E | Vikas Mahajan, AAG Himanshu Tyagi, Vinod Sharma, Anil Kumar, Amarnath Singh, M.C. Dhingra, Mrs. Priya Puri, Yati Sharma, Ranjay Dubey, Ms. Rashmi Sachdeva, Sharad Kumar Puri, Advs. for the appearing parties. | | |
| F | The Judgment of the Court was delivered by R. SUBHASH REDDY, J. | | |
| G | 1. This appeal is filed by the Himachal Road Transport Corporation and another, aggrieved by the judgment and Order dated 08.01.2009, passed by the High Court of Himachal Pradesh, at Shimla in CWP No. 1362 of 2001. | | |
| H | 2. The Himachal Road Transport Corporation is established under The Road Transport Corporations Act, 1950. The employees of the Corporation were governed by the Contributory Provident Fund Scheme (CPF). The appellant-Corporation introduced a Pension Scheme in the year 1995, by issuing a Notification dated 06.10.1995 and adopted Central Civil Service (Pension) Rules, 1972. The second appellant has approved | | |

the Scheme formulated by the Corporation. The Pension Scheme was given effect to from 05.06.1995, that is from the date on which Scheme was approved by the Cabinet/ Government. For the employees who retired from 05.06.1995, till the date of notification, i.e., 06.10.1995 and for the employees in service, an option was given either to opt for Pension Scheme, or to continue under the Contributory Provident Fund. Clause 5 of the Scheme, stipulates eligibility criteria to opt for Pension Scheme.

3. The respondent-Union, consisting of the employees who retired prior to 05.06.1995, approached the Administrative Tribunal by filing Original Application in OA (D) No. 237/1996, for grant of following reliefs:

- “i) That the cut off date for grant of pension to those employees who were in service of the Corporation as on June 5, 1995 be quashed and set aside;
- ii) That the applicants i.e. pre June 5, 1995 employees, may be held entitled for pension as the other similarly situated employees between June 5, 1995 to October 6, 1995 have been given the benefit as per Clause 5 of the said Scheme;
- iii) That the action of the respondents Corporation in denying pension to the applicants may be declared illegal, unjust, unreasonable, arbitrary and violative of Article 14, 16, 21.”

The respondent-union, relying on a judgment of this Court in the case of **D.S. Nakara & Ors. v. Union of India**¹ and several other judgments, pleaded that the fixation of cut-off date was arbitrary and discriminatory.

4. The appellants have contested the Original Application, filed by the respondent-Union, inter alia pleading that they have introduced a Pension Scheme to the employees of the Corporation, with effect from 05.06.1995, on which date Cabinet has approved the Scheme. It was the plea of the appellants that all the employees of the Corporation, who retired prior to 05.06.1995, were already paid all the retiral benefits including the benefit of Contributory Provident Fund, as such the cut-off date fixed, i.e., 05.06.1995, for implementing the Pension Scheme, was not discriminatory.

¹ AIR 1983 SC 130 = (1983) 1 SCC 305

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- A 5. The Himachal Pradesh Administrative Tribunal, by judgment dated 19.06.2001, dismissed the Original Application filed by the respondent-Union, by holding that the appellants are entitled to fix the cut-off date for introducing the Pension Scheme for its employees and such fixation is not discriminatory. It was held that all the employees of the Union, who were governed by the Contributory Provident Fund, on their retirement, have already availed the benefit of such fund. It was further noticed by the Tribunal that, as the Cabinet has approved the Scheme in its meeting held on 05.06.1995 as such, the Scheme was given effect to from such date. By recording a finding that the employees who were already retired prior to 05.06.1995, constitute a different category and are not similarly placed as those employees who were in service of the appellant-Corporation as on 05.06.1995, dismissed the Original Application.
- B 6. The respondent-Union, aggrieved by the judgment and Order of the Administrative Tribunal, approached the High Court of Himachal Pradesh, at Shimla, by way of Civil Writ Petition No. 1362 of 2001. In the Writ Petition filed, mainly it was the case of the respondent-Union that, the cut-off date, i.e, 05.06.1995, fixed by the Corporation for implementation of Pension Scheme is discriminatory and has no reasonable nexus with the object sought to be achieved. It was the plea of Union that all the employees of the Corporation, constitute a homogeneous class and there cannot be a classification within the class. By impugned judgment and Order dated 08.01.2009, the High Court has allowed the Writ Petition, by quashing the cut-off date, on the ground that no reasons were forthcoming from the appellant-Corporation, for picking up the cut-off date, i.e, 05.06.1995, for implementation of Pension Scheme. Further, High Court has declared that the Scheme which was notified on 06.10.1995, shall apply to the members of the respondent-Union and other similarly situated persons, with a condition that they will have to deposit the amount received by them under the Contributory Provident Fund Scheme, within a reasonable time. The High Court has set aside the Order of the Administrative Tribunal dated 19.06.2001, passed in OA (D) 237/1996.
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- H 7. Aggrieved by the said judgment and order passed by the High Court, the Road Transport Corporation is before us, by way of this civil appeal.

8. We have heard Sri Himanshu Tyagi, learned counsel appearing for the appellant-Corporation and Sri M.C. Dhingra, learned counsel appearing for the respondent-applicant. A

9. It is contended by Sri Himanshu Tyagi, learned counsel for the appellant-Corporation that, though there is no discrimination in fixing the cut-off date, i.e, 05.06.1995, by way of Notification dated 06.10.1995, the High Court has allowed the writ petition, without assigning valid reasons. It is submitted that the employees who retired prior to 05.06.1995, by availing the benefit of Contributory Provident Fund Scheme, constitute a separate class. After availing the benefit of Contributory Provident Fund Scheme, on their retirement, it is not open to plead that Pension Scheme, as notified for the existing employees and the employees retired between 05.06.1995 and 06.10.1995 is discriminatory. The employees who retired prior to 05.06.1995, and the employees presently in service, cannot be treated as a homogeneous class. It is submitted that, it is always open for the employer to extend further benefits to the employees prospectively. When such Scheme is introduced with effect from the date of its approval, i.e, 05.06.1995, same is rightly not extended to the employees who retired prior to 05.06.1995. The Pension Scheme was approved by the Cabinet on 05.06.1995, as such it cannot be said that such a fixation is either arbitrary or illegal. B
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10. On the other hand, Sri M.C. Dhingra, learned counsel appearing for the respondent-applicant, has submitted that there is absolutely no reason or justification for fixing the cut-off date, i.e, 05.06.1995, for implementation of Pension Scheme. It is submitted that all the employees of the Corporation constitute one homogeneous class and the appellant-Corporation should not have made any distinction among such class of employees. It is submitted that, as no valid reasons have been assigned by the appellant-Corporation, for fixing the cut-off date, as such the High Court has rightly allowed the Writ Petition and there are no grounds to interfere with the same. Further submissions of learned counsel for the respondent is that, though the Pension Scheme was notified vide Notification dated 06.10.1995, same was given effect to retrospectively from 05.06.1995, as such there is no reason for not extending such benefit to the employees who retired prior to 05.06.1995 also. With the contentions, as referred above, learned counsel prayed for dismissal of the civil appeal. E
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- A 11. Having heard the learned counsels on both sides, we have perused the impugned order of the High Court, the order passed by the Tribunal and other material placed on record.
- B 12. Before entering into the contentious issue of fixation of cut-off date, for extending the benefit of Pension Scheme by the Corporation, we need to notice certain factual aspects emerging from the pleadings of the parties and other material on record.
- C 13. The members of the respondent-Union were initially employed by the Mandi- Kullu Road Transport Corporation. By Order dated 24.09.1974, the said Corporation was re-named as "Himachal Road Transport Corporation" and vide notification dated 01.10.1974, the Himachal Pradesh State Government has taken over the services of such employees with effect from 02.10.1974. All the members of the respondent-Union, who were retired, were governed by the Contributory Provident Fund Scheme, after their services were taken over by the Corporation with effect from 02.10.1974. The State Government has notified the Pension Scheme on 06.10.1995, however, the same was made applicable with effect from 05.06.1995. The Administrative Tribunal, by drawing a distinction on the facts from the case of *D.S. Nakara*¹ and other judgments relied on, on behalf of the respondent, has held that the point which arises in the instant case is different from the cases relied upon. The Tribunal has held that the members of the respondent-Union were governed by the Contributory Provident Fund and had, on their retirement, availed such benefit whereas the Scheme of pension was made applicable with effect from 05.06.1995, as per the Notification dated 06.10.1995. The Tribunal, by recording a finding that the employees who already retired by availing the benefit under the Contributory Provident Fund Scheme, constitute a different category and are not similarly placed as those employees who were in service of the Corporation on 05.06.1995, on which date the Scheme was approved, has dismissed the Original Application.
- G 14. When the order of the Tribunal, rejecting the claim of the respondent-Union was challenged, by way of Civil Writ Petition, the High Court, by referring to certain cases decided by this Court, without any independent assessment on the issue in question, has allowed the writ petition, by impugned order.

15. In the case of **D. S. Nakara¹**, this Court had treated the pension retirees only, as a homogeneous class and all the pensioners governed by *The 1972 Rules*, were treated as a class, because payment of pension was a continuing obligation on the part of the State, till life long to the pensioners, unlike the beneficiaries of the Contributory Provident Fund. In the said case, it was never held that the pension retirees and the employees in service, constitute a homogeneous class. In the case of **R.L Marwaha v. Union of India and others²**, this Court has held that fixing of a date for grant of benefit, must have nexus with the object sought to be achieved. There cannot be any dispute on the proposition. Further, the case of **Union of India and another v. Deoki Nandan Aggarwal³**, relates to fixation of cut-off date, for grant of liberalized Pension Scheme. Even in the case of **Subrata Sen and others v. Union of India and others⁴**, where a cut-off date was fixed for the purpose of applicability of revised pension scheme this Court has held that all retired employees constitute one homogeneous class and there cannot be cut-off date fixed to extend such benefits. All the above said cases which are referred to and relied on by the High Court are not relevant and cannot be pressed into service, to decide the issue which arises on the facts of this case.

16. Though there are long line of cases, where validity of fixation of cut-off date is considered by this Court, we confine and refer to the case law which is relevant to the facts of the case on hand. In the case of **State of Punjab v. Amar Nath Goyal⁵**, while examining the validity of cut-off date fixed for grant of benefit of increased quantum of death-cum-retirement gratuity, this Court has held that the financial constraint pleaded by the Government, was a valid ground for fixation of cut-off date and such fixation was not arbitrary, irrational or violative of Article 14 of the Constitution. While differentiating the facts with the case of **D.S. Nakara¹**, this Court held in para 29 of the judgment, which reads as under:

“29. D.S. Nakara¹ which is the mainstay of the case of the employees arose under special circumstances, quite different from the present case. It was a case of revision of pensionary benefits

² 1987 (4) SCC 31

³ 1992 Supp. (1) SCC 323

⁴ (2001) 8 SCC 71

⁵ (2005) 6 SCC 754

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- A and classification of pensioners into two groups by drawing a cut-off line and granting the revised pensionary benefits to employees retiring on or after the cut-off date. The criterion made applicable was “being in service and retiring subsequent to the specified date”. This Court held that for being eligible for liberalised Pension Scheme, application of such a criterion is violative of Article 14 of the Constitution, as it was both arbitrary and discriminatory in nature. The reason given by the Court was that the employees who retired prior to a specified date, and those who retired thereafter formed one class of pensioners. The attempt to classify them into separate classes/groups for the purpose of pensionary benefits was not founded on any *intelligible dirrerentia*, which had a rational nexus with the object sought to be achieved. However, it must be noted that even in cases of pension, subsequent judgments of this Court have considerably watered down the rigid view taken in **D.S. Nakara**¹ as we shall see later in **T.N. Electricity Board v. R. Veerasamy** (“Veerasamy”). In any event, this is not a case of a continuing benefit like pension; it is a one-time benefit like gratuity.”
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- E 17. In the case of **Govt. of Andhra Pradesh & others v. N. Subbarayudu & others**⁶, by noticing that a rigid view was taken in the case of **D.S. Nakara**¹, this Court has considerably watered down the same and has held that fixing the cut-off date is an executive function based on several factors like economic conditions, financial constraints, administrative and other circumstances. This Court further held that even if no reason is forthcoming from executive, for fixation of a particular date, it should not be interfered by Court, unless cut-off date leads to some blatantly capricious or outrageous result.
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- G 18. In the case of **Suchet Singh Yadav and others v. Union of India and others**⁷, of which one of us is a party, (*Hon'ble Ashok Bhushan, J.*), while examining the claim of commissioned officers of defence forces, i.e, Army, Air force and Navy, who retired prior to 01.01.1996, for grant of next higher pay scale, on the strength of Order of Government of India dated 21.11.1997, which was issued in consequence of implementation of Fifth Pay Commission Report, this Court has not accepted the plea of discrimination. In the said judgment,

⁶ (2008)14, SCC 702

⁷ (2019)11 SCC 520

it is held that pensioners, for purposes of pension, constitute one class and schemes which classify pensioners on basis of cut-off date are impermissible unless such classification is founded on some rational principle. On the facts of the case, in the aforesaid judgment it is held that the Order which was issued by the Government of India on 21.11.1997, is applicable only to existing officers and not retirees. Further in the case of *All Manipur Pensioners Association by its Secretary v. The State of Manipur and others*⁸, of which, one of us is a party, (Hon'ble M.R. Shah, J.), when validity of Office Memorandum dated 21.04.1999, issued for revising the quantum of pension by fixing the cut-off date on 01.01.1996 is questioned, this Court has held that all pensioners form only one homogeneous class and held that such a fixation of date for extending the benefits of revised benefits to the pensioners, is arbitrary and violates Article 14 of the Constitution.

19. Coming back to the facts of the case on hand, by applying the case law which is referred above, it is clear that all the members of the respondent-Union, while in service, were governed by Contributory Provident Fund Scheme. All those employees who retired before 05.06.1995, were paid all retiral benefits, applicable to them. As the Pension Scheme was not in existence during the relevant time, it was not the case of violation of any service conditions either. The Pension Scheme is introduced by way of notification dated 06.10.1995, by giving effect from 05.06.1995, on which date the Cabinet has approved the Scheme. The employees who were governed by the Contributory Provident Fund Scheme and retired prior to 05.06.1995 and the employees who were in service and continued after 05.06.1995, of the appellant-Corporation, cannot be treated as a homogeneous class. The retired employees, who were governed by the Contributory Provident Fund Scheme, on their retirement had already received the benefits of such Scheme, constitute different class than those employees who were in service as on 05.06.1995. There is a valid reason for giving effect to the Pension Scheme from 05.06.1995, though the notification was issued on 06.10.1995. The cut-off date, i.e, 05.06.1995 is fixed on the ground that the Cabinet has approved the Scheme from such date. As already noticed above, it is always open for the employer to introduce new Schemes and benefits, having regard to financial health of the employer. Whenever such new benefit is extended for the existing employees, retired employees

⁸ (2019)9 Scale, 282

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- A cannot seek such benefit, merely on the ground that they too were the former employees of the Corporation. In spite of specific plea of the appellant-Corporation that the benefit of the Scheme was extended from 05.06.1995, in view of approval granted by the Cabinet to the Scheme, the High Court has erroneously recorded a finding that no reason has been assigned to choose such cut-off date. It is true that all pensioners constitute one class and whenever, revision is effected, ordinarily such benefit is to be extended to all the pensioners but at the same time, the scenario in the case on hand, is totally different. On the facts of this case, it is to be noticed that when the members of the respondent-Union retired, there was no Pension Scheme at all. They were merely governed by the Contributory Provident Fund Scheme and, on retirement, they were already granted the benefit of such Scheme. In that view of the matter, only on the spacious plea that all the employees of the Corporation constitute homogeneous class, cannot question the cut-off date fixed for grant of Pension Scheme.
- D 20. It is profitable to refer a judgment of this Court, in the case of *State of Rajasthan and Another v. Amrit Lal Gandhi and others*⁹. The ratio decided in the said case is identical to the issue on hand in the present case. In the aforesaid case, pursuant to recommendations made in the year 1986, by a committee appointed by University Grants Commission, the Syndicate and Senate of the University has recommended for introducing a Pension Scheme for the employees of the University. The State Government's approval was sought, which was given for introducing the Scheme with effect from 01.01.1990. When such fixation of cut-off date from 01.01.90 was found fault with, by the High Court and the High Court issued directions to give effect from 01.01.1986, while reversing the judgment of the High Court, this Court has held that fixation of cut-off date from 01.01.1990 cannot be said to be arbitrary or discriminatory. Relevant paragraph Nos. 16 and 17 of the judgment, read as under:
- G “16. Applying the ratio of the aforesaid decisions to the present case, we find no justification for the High Court having substituted the date of 1-1-1986 in lieu of 1-1-1990. It is evident that for introducing a pension scheme, which envisaged financial implications, approval of the Rajasthan Government was required.

H ⁹(1997) 2 SCC 342

In the letter of 16-4-1991, written to the Vice-Chancellors of A
different universities of Rajasthan, it was stated as follows:

“As per the direction in regard to the aforesaid subject, the State B
Government has decided to introduce Pension Scheme in the
Universities of the State w.e.f. 1-1-1990. In this regard the State
Legislature has passed University Pension Rules and General
Provident Fund Rules. Therefore, by enclosing a copy of C
University Pension Regulations and General Provident Fund
Regulations with this letter, it is requested that by obtaining approval
of the competent body or Syndicate of the University, these
Regulations be implemented in the University together and
necessary information regarding implementation be intimated.”

17. The Syndicate and Senate of the University, when they had D
forwarded their recommendations in 1986, did not contain a specific
date with effect from which the pension scheme was to be made
applicable. Their recommendations were subject to approval. The
approval was granted by the Government, after the State E
Legislature had passed the University Pension Rules and General
Provident Fund Rules. The Government had stated in its affidavit
before the High Court that the justification of the cut-off date of
1-1-1990 was “wholly economic”. It cannot be said that the paying F
capacity is not a relevant or valid consideration while fixing the
cut-off date. The University could, in 1991, validly frame Pension
Regulations to be made applicable prospectively. It, however, chose G
to give them limited retrospectively so as to cover a larger number
of employees by taking into account the financial impact of giving
retrospective operation to the Pension Regulations. It was decided
that employees retiring on or after 1-1-1990 would be able to
exercise the option of getting either pension or provident fund.
Financial impact of making the Regulations retrospective can be
the sole consideration while fixing a cut-off date. In our opinion, it
cannot be said that this cut-off date was fixed arbitrarily or without
any reason. The High Court was clearly in error in allowing the
writ petitions and substituting the date of 1-1-1986 for 1-1-1990.”

21. The High Court, without noticing the difference of factual H
background, in the cases relied on by the respondent-writ petitioner and
without independently considering the issue in question, has allowed the

A writ petition. In view of the same, we are of the view that judgment of the High Court deserves to be set aside.

22. Accordingly, this civil appeal is allowed. Judgment of the High Court dated 08.01.2009, passed in Civil Writ Petition No. 1362 of 2001 is set aside, consequently said writ petition stands dismissed, with

B no order as to costs.

Devika Gujral

Appeal allowed