

versus Workmen, (2007) 1 SCC 408, Reserve Bank of India *versus* Gopinath Sharma and another, (2006) 6 SCC 221 and UP Power Corporation Limited and another *versus* Bijli Mazdoor Sangh and others, (2007) 5 SCC 755, he is not entitled to reinstatement. In such circumstances, the case would fall under section 2 (oo) of the Act and the provisions of Section 25-F of the Act would not be attracted”.

(10) The said view is the consistent view of this Court in numerous other judgments.

(11) In view of the aforesaid judgments, we are of the opinion that the award of the Labour Court, Annexure P-3, reinstating the workman with continuity of service and back wages is factually illegal and unwarranted.

(12) Consequently, the present writ petition is allowed and the impugned award, Annexure P-3, is set aside.

R.N.R.

Before M.M. Kumar & Jora Singh, JJ.

**S.M.D.R.S.D. COLLEGE SOCIETY, PATHANKOT AND
ANOTHER,—Petitioners**

versus

STATE OF PUNJAB AND OTHERS,—Respondents

C.W.P. No. 15563 of 2008

21st October, 2008

Constitution of India, 1950—Art.226—Punjab Affiliated Colleges (Security of Service of Employees) Act, 1974—S. 2(a)—Appointment as a Lecturer on an unaided post—Probation period extended—Management finding work & conduct of teacher not satisfactory—Termination of services during extended period of probation—Factum of intimation regarding extending period of

probation by a registered letter authenticated by postal authorities—Management complying with provisions of Regulation 3.1 of Calendar—Concept of deemed confirmation—Applying only to cases where employer considering employee for confirmation after completion of maximum period of probation—Petition allowed, order terminating services of teacher upheld.

Held, that a perusal of Section 2(a) of the Punjab Affiliated Colleges (Security of Service of Employees) Act, 1974 would reveal that any employee appointed against a post which is to continue for more than one year is required to remain on probation for a period of one year which may be extended from time to time and the total period of probation including extension is not to exceed two years. Regulation 3.1 of the Calendar postulates that an employee would ordinarily be appointed on probation for a period of one year and he is to be confirmed if his work is found satisfactory. Regulation 3.1 of the Calendar requires the management to notify extension in the period of probationary before the expiry of probation period of one year. This regulation seemingly suggests automatic confirmation in case intimation before expiry of probationary period of one year is not sent. Despite the aforementioned stipulation the maximum period of probation along with extension provided by the regulation is two years. The petitioner-management has religiously complied with the requirement of Regulation 3.1 of the Calendar.

(Paras 13 & 14)

Further held, that on principle as well as on precedent it has become evident that there cannot be any automatic confirmation. If no order extending the period of probation before the expiry of one year was passed, there could be no scope for the teacher-respondent No. 4 to assume that he is deemed to be confirmed. The concept of deemed confirmation could be applied only to cases where the employer by his act and conduct has made it absolutely clear after the completion of maximum period of probation that he has considered the employee to be confirmed. Therefore, the writ petition is liable to succeed, especially when the maximum period of probation provided under the Act and the Calendar is two years and the teacher-respondent No. 4 had not

completed the same when the order of termination was passed by the petitioner-Management on 19th April, 2005. The impugned order dated 12th February, 2008 passed by the Director is set aside and order dated 19th April, 2005 terminating the services of the teacher-respondent No. 4 is upheld.

(Paras 20 & 21)

R.S. Minhas, Advocate, *for the petitioners.*

Suvir Sehgal, Additional AG, Punjab, *for the respondent Nos. 1 and 2.*

Balwinder Singh, Advocate, *for respondent No. 4.*

M.M. KUMAR, J.

(1) Once again the question of automatic confirmation of a probationer before completion of maximum period of probation has been raised on the basis of the peculiar rule applicable to the case, which required passing of specific order of extension of period of probation. The Management of the S.M.D.R.S.D. College Society, Pathankot (for brevity, 'the petitioner-Management') has approached this Court with a prayer for quashing order dated 12th February, 2008 (P-4) passed by the Director, Public Instruction (Colleges), Punjab-respondent No. 2 (for brevity, 'the Director'). It has been held by the Director that Shri Ravinder Kumar-respondent No. 4 (for brevity, 'the teacher-respondent No. 4) is deemed to be confirmed with effect from 6th January, 2005 on completion of one year period of probation. The teacher-respondent No. 4 had challenged order dated 19th April, 2005, passed by the petitioner-Management terminating his services purportedly during the period of probation in an appeal filed under Section 4(3) of the Punjab Affiliated Colleges (Security of Service of Employees) Act, 1974 (for brevity, 'the Act').

(2) At the outset it needs to be mentioned that against impugned order dated 12th February, 2008 (P-4), passed by the Director, a further appeal has been provided under Section 4(4) of the Act. However, on account of non-functioning of the College Tribunal, Punjab (for brevity, 'the Tribunal') we have entertained the petition. It is appropriate

to mention that when the matter come up for consideration before this Court on 3rd September, 2008, while issuing notice of motion a specific direction was issued to the learned State counsel to find out as to whether the Tribunal was functioning or not. On 11th September, 2008, Mr. Suvir Sehgal, learned State counsel, could only make one statement that the file had been sent to the competent authority for nomination of the Member of the Tribunal, which was likely to be notified. On our query learned State counsel was not able to specify as to how much time would be taken by the State Government to nominate the Member of the Tribunal. Accordingly, we entertained the petition and have proceeded to hear the arguments.

(3) Firstly, brief facts of the case would be necessary for disposal of the controversy raised by the parties. On 27th December, 2003, the teacher-respondent No. 4 was appointed as a Lecturer of Mathematics against an un-aided post on probation by the petitioner-Management. The petitioner-Management has categorically asserted that it is not receiving any grant-in-aid for the advertised post on which the teacher-respondent No. 4 was appointed. He joined the College run by the petitioner-Management. The claim of the petitioner-Management is that his first year of probation was not found satisfactory and the authorities of the Guru Nanak Dev University, Amritsar (for brevity, 'the University') pointed out negligence on his part when he was discharging duty during examinations. Accordingly, the petitioner-Management resolved by a resolution to extend his period of probation. A letter dated 3rd January, 2005 was accordingly sent to the teacher-respondent No. 4 under Registered A.D. cover. The aforementioned letter as well as the postal receipt of sending the same on 3rd January, 2005 is available in the original record. The petitioner-Management has also produced on record a copy of the communication received from the post office showing that the letter was delivered to the teacher-respondent No. 4. The aforementioned letter is also available on the record which has been sent by the Department of Posts, Government of India, Office of Post Master, Pathankot, M.D.G. District Gurdaspur-145 001. It has been specifically communicated to the Principal of the College that the registered letter A-122 has been delivered to the addressee i.e the teacher—respondent No. 4 on 4th January, 2005. The

work and conduct of the teacher-respondent No. 4 was not found satisfactory even during the extended period of probation. The petitioner-Management found that the approach adopted by him was casual and does not show any sign of improvement despite clear instructions. Accordingly, the petitioner-Management resolved to relieve him from service on paying one month's pay in lieu of one month's prior notice and order, dated 19th April, 2005 terminating his services was issued.

(4) The teacher-respondent No. 4 filed C.W.P. No. 672 of 2006, which was ordered to be withdrawn with liberty to approach the DPI (Colleges). Thereafter, the teacher-respondent No. 4 challenged his order of termination by filing an appeal, bearing Appeal No. 5 of 2006, under Section 4(3) of the Act before the Director. The Director allowed the appeal filed by the teacher-respondent No. 4, *vide* order, dated 30th April, 2007.

(5) Feeling aggrieved, the petitioner-Management also preferred further appeal before the Tribunal, which was in existence at that time, bearing Appeal No. 5 of 2007, under Section 4(4) of the Act challenging order, dated 30th April, 2007 passed by the Director. The Tribunal set aside order, dated 30th April, 2007 and remanded the matter back to the Director,—*vide* order, dated 10th August, 2007 with a direction to pass a speaking order after hearing the parties. Accordingly, the Director has now passed order, dated 12th February, 2008 (P-4), setting aside the termination order, dated 19th April, 2005 and has ordered reinstatement of the teacher-respondent No. 4. The view of the Director would emerge from the following part of para 10 of the impugned order :—

“10.It has been mentioned in the advertisement itself that the appellant was required to teach mathematics to the Post-graduate classes. The publication, which has been brought out by the respondent themselves lauds the achievements by the M.Sc. II class which was taught by the appellant, is sufficient evidence by itself of the work of the appellant. The appellant has a legitimate expectation to receive the salary as per the norms according to which he is required to possess the qualification. There is no provision

for paying the fixed salary as has been done by the respondents. The counsel for the respondents has not been able to point out if there was complaint regarding the conduct of the appellant by the students, their parents or the colleagues of the appellant. The counsel could also not place on record anything to prove that the appellant has received the letter, dated 3rd January, 2005 or a copy of any resolution passed by the respondent regarding the work and conduct of the appellant necessitating extension in the period of probation of the appellant beyond one year before the expiry of one year period as mentioned in the letter of appointment. In my considered view, in the prevalent circumstances, the appellant is deemed to have been confirmed with effect from 6th January, 2005 on completion of one year period of Probation. Accordingly, the appellant shall be entitled to receive the grade applicable to his post as per UGC/GNDU, Amritsar and DPI (C), Punjab norms with admissible allowance from the dated (date ?) of his appointment. Since the service of the appellant has been illegally terminated without assigning any reasons, I hereby quash and set aside the order dated 30th April, 200 (19th April, 2005 ?). The appellant shall be deemed to be in service continuously and shall be entitled to all the benefits which would include salary, all admissible allowances and the arrears thereof.”

(6) The case of the teacher-respondent No. 4 is that he had passed his Master of Science (Mathematics) from the University in the 1st Division in April, 1987 and then joined S.M.S.D. Rajput College, Sujapur as a Lecturer. He has further asserted that he had taught the senior secondary classes from 1st August, 1989 to 31st March, 1993 and he was regarded as a competent and hard working teacher. He has also pointed out that he worked as Lecturer in Mathematics with the petitioner's college from 1st August, 1995 to 28th February, 1996, 1st August, 1996 to 31st October, 1996 and 1st September, 1999 to 29th February, 2000. He had appeared for the Joint CSIR-UGC National Eligibility Test (NET), held by the University Grants Commission, for becoming eligible to be appointed as a lecturer and was declared

successful in 2002. The petitioner-Management issued an advertisement in the year 2003 in the English Daily 'The Tribune', inviting applications for the post of Lecturer in Mathematics and he applied on 6th October, 2003. He claimed that the post was a regular sanctioned post. He was called for interview on 4th December, 2003 and he was found suitable for the post. Accordingly, he was issued an appointment letter, dated 27th December, 2003, which stipulated that he would be on probation as per the University's rules and initial period of probation was one year. The teacher-respondent No. 4 has claimed that his work and conduct remained satisfactory and he discharged his duties with utmost dedication and devotion and that he was being paid fixed salary of Rs. 8,000 per month. He has, thus, claimed that relieving is not because of lack of qualification or any defect in his work and conduct, which, in fact, is actuated by *mala fide* as he has not been paid the allowances.

(7) Mr. R.S. Minhas, learned counsel for the petitioner-Management has argued that duration of period of probation has been provided by Section 2 of the Act and Regulation 3.1 of the Guru Nanak Dev University Calendar Volume II (for brevity, 'the Calendar'). According to the learned counsel the maximum period of probation provided by both the provisions of the Act as well as Calendar is two years. He has maintained that once the service of the teacher-respondent No. 4 has been terminated before the expiry of period of two years, he cannot claim to be confirmed. He has further submitted that his work and conduct was found to be unsatisfactory and a resolution was passed on 31st December, 2004 (at page No. 54 of the Register). A copy of the resolution has been produced on the original record. According to the learned counsel, the petitioner-Management has taken specific notice of the fact that the work of the teacher-respondent No. 4 is not satisfactory as he was found deficient in performance of his duties by the Principal who in turn had received unsatisfactory report about his performance in the classes also. It has further been pointed out that during April 2004 he was deputed for examination duty by the University where he was found negligent. Learned counsel has further pointed out that the fact of extending his probationary period was communicated to him on 3rd January, 2005 under Registered A.D. cover and a telegram to that effect

was also sent at his address given to the petitioner-Management. The Post Office has duly authenticated the factum of delivery of the registered letter on 4th January, 2005. In support of his submission, he has submitted that the teacher-respondent No. 4 cannot be deemed to be confirmed as the requirement of Regulation 3.1 of the Calendar have been religiously complied with and a letter was sent to him before expiry of period of one year. In any case, he has submitted that the maximum period of probation provided by Section 2 of the Act as well as Regulation 3.1 of the Calendar is two years. In the absence of successful completion of period of probation of two years, the teacher-respondent No. 4 cannot claim to be confirmed. In support of his submission, learned counsel has placed reliance on a judgement of Hon'ble the Supreme Court in the case of **Karnataka State Road Transport Corporation versus S. Manjunath (1)**, and argued that mere non-extension of period of probation where it could be extended would not imply automatic confirmation.

(8) Mr. Balwinder Singh, learned counsel for the teacher-respondent No. 4 has argued that the provisions of Regulation 3.1 of the Calendar are mandatory which provided that on completion of one year probation ordinarily an employee would be deemed to be confirmed. In case of any extension in the period of probation, the petitioner-Management was required to notify to the teacher-respondent No. 4 in writing about extension of probationary period before the expiry of period of one year. Learned counsel has further submitted that in the absence of such a notice, the teacher-respondent No. 4 is deemed to be confirmed and that the period of probation cannot be extended beyond two years in any case. He has further argued that the letter, dated 3rd January, 2005, which is claimed to have been sent by the petitioner-Management is a fabricated document and has never been sent to the teacher-respondent No. 4 and, therefore, by virtue of Regulation 3.1 of the Calendar, the teacher-respondent No. 4 has become a confirmed lecturer on the expiry of period of one year.

(9) Another argument raised by Mr. Balwinder Singh is that the teacher-respondent No. 4 has been victimized, inasmuch as, there was

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no complaint with regard to his work and conduct. The petitioner-Management has acted arbitrarily in terminating his services.

(10) Having heard learned counsel for the parties at length and perusing the original record produced before us, we are of the considered view that this petition deserves to succeed and the impugned order dated 12th February, 2008 (P-4) passed by the Director is liable to be set aside. It is undisputed that the teacher-respondent No. 4 was appointed as Lecturer in Mathematics by the petitioner-Management on 27th December, 2003. A copy of his appointment letter has been placed on record (P-1). It clearly stipulates that the teacher-respondent No. 4 has to work as per the rules framed by the University and the UGC. The teacher-respondent No. 4 has joined his duty on 6th January, 2004. His period of probation of one year was to expire on 5th January, 2005 whereas before expiry of the period of one year, the petitioner-Management sent a letter on 3rd January, 2005 to him extending his period of probation for another year (P-2). On account of dispute about this letter, we had summoned the original record and have examined the same. A perusal of the original record shows that the petitioner-Management had sent a registered letter to the teacher-respondent No. 4 on 3rd January, 2005, which reveal that during the period of his service from 6th January, 2004 his work and conduct was not found satisfactory. The Principal who sent the letter has expressed the opinion in the following words :—

“Reference letter No. 2003/sdp/244, dated 27th December, 2003, you were appointed as Lecturer in Mathematics with effect from 6th January, 2004 on uncovered/unsanctioned post. During this period your work was not found satisfactory. For instance your negligence of duty was pointed out by the member of the flying squad during April, 2004 Guru Nanak Dev University, Amritsar examinations and you too had been defiant for performing the duties/house examination duties assigned to you by the undersigned and the undersigned has not found satisfactory reports about your performances in the classes assigned to you also. Hence the managing Society

of SMDRSD College, Pathankot has decided to extend your probationary period w.e.f. from 6th January, 2005 with the instructions that you should try to improve your work. Otherwise, you can be relieved from service at any time during the extended period.”

(11) In order to verify that the letter was actually sent, the Dispatch Register has also been produced before us. We have found that there is a receipt issued by the Post Office at Pathankot authenticating that a registered letter was sent by the petitioner-Management to the teacher-respondent No. 4. On account of the fact that the letter was disputed by the teacher-respondent No. 4, the Principal of the College addressed a letter to the concerned post office. A specific reply has been sent by the Department of Posts, Government of India, Office of Post Master, Pathankot, M.D.G., District Gurdaspur-145 -001, intimating the petitioner-Management that registered letter was delivered to the addressee i.e. the teacher-respondent No. 4 on 4th January, 2005. The record further reveals that even a telegram was sent to him intimating that his period of probation was extended and a letter is on the way. Therefore, we are satisfied that intimation regarding extending the period of probation was sent to the petitioner before the expiry of period of one year and it has been duly received by the teacher-respondent No. 4. The teacher-respondent No. 4 was thereafter relieved from his duties on 19th April, 2005 (P-3) when his services were terminated.

(12) The question arises as to whether the petitioner-Management has acted in accordance with Section 2 of the Act and Regulation 3.1 of the Calendar. It would be necessary to notice Section 2 of the Act as well as Regulation 3.1 of the Calendar, which reads thus :—

“Section 2(a) Period of Probation

Any employee appointed against the vacancy likely to exceed for more than one year shall remain on probation for a period of one year which may be extended from time to time ;

Provided that the total period of probation including extension, if any, shall not exceed two years.”

Regulation 3.1

“3.1. The employee will ordinarily be appointed on one year’s probation after which he will normally be confirmed if his work is found satisfactorily (satisfactory ?). It would be obligatory on the part of the managing body to notify to the teacher in writing before the expiry of one year probationary period, whether he had been confirmed or his period of probation has been extended and in the absence of such a notice he would be deemed to have been confirmed. The probation period in no case shall be extended beyond two years from the date of appointment.”

(13) A perusal of Section 2(a) of the Act would reveal that any employee appointed against a post which is to continue for more than one year is required to remain on probation for a period of one year which may be extended from time to time and the total period of probation including extension is not to exceed two years. Regulation 3.1 of the Calendar postulates that an employee would ordinarily be appointed on probation for a period of one year and he is to be confirmed if his work is found satisfactory. Regulation 3.1 of the Calendar requires the management to notify extension in the period of probation before the expiry of probationary period of one year. This regulation seemingly suggests automatic confirmation in case intimation before expiry of probationary period of one year is not sent. Despite the aforementioned stipulation the maximum period of probation along with extension provided by the regulation is two years.

(14) When we examined the facts of the present case in the light of the Regulation 3.1 of the Calendar it becomes evident that the petitioner-Management has religiously complied with the requirement

of Regulation 3.1 of the Calendar. The teacher-respondent No. 4 has joined the service as lecturer on 6th January, 2004. His probationary period of one year was to expire on 5th January 2005. A registered letter was sent to him on 3rd January, 2005 intimating that his period of probation has been extended as his work and conduct was not found satisfactory. The factum of intimation has been authenticated by the postal authorities by sending letter to the petitioner-Management that the registered letter was delivered to the teacher-respondent No. 4 on 4th January, 2005. On facts the provisions Regulation 3.1 of the Calendar stand complied with.

(15) However, for the sake of argument if it is assumed that the petitioner-Management without intimating the teacher-respondent No. 4 has terminated his services on 19th April, 2005, the legal effect would continue to be the same. A similar regulation which exists in the Punjabi University Calendar was considered by a Division Bench of this Court in the case of **Kartar Singh versus Director, Public Instruction, Punjab (2)**. It would be apposite to extract Regulation 3 which existed in the Punjabi University Calendar Volume 1 and the same reads thus :—

“3. Unless appointed temporarily, the employee appointed on one year’s probation would be confirmed if his work is found satisfactory. The employer shall notify to the teacher in writing before the expiry of one year’s probationary period, if his period of probation is to be extended and in the absence of such a notice the teacher would be deemed to have been confirmed. The probationary period shall in no case be extended beyond two years from the date of appointment. In case a person appointed temporarily is reappointed on probation, the period of his service in temporary capacity shall be counted towards his probationary period.”

(16) The aforementioned regulation has been interpreted by the Division Bench and it has been observed that the sum and substance

of the regulation is the satisfactory completion of work by the probationer. He could be confirmed if his work and conduct measure up to the satisfaction of the management and not merely by afflux of time because the basic emphasis is on the quality of the work during the prescribed period of probation. On the language of the regulation in question we cannot conclude that either expressly or by necessary intendment the procedural part of the time within which the notice is to be given could be held to be mandatory. It has to be construed as directory in nature because the procedural part of the aforesaid provision would not override the substance of the matter i.e. the satisfaction in respect of the entire work and conduct of the probationer before confirmation.

(17) A similar question has arisen before a Full Bench of this Court in the case of **Guru Nanak University versus Dr. (Mrs.) Iqbal Kaur Sandhu (3)**. Keeping in view the dominant object of the statute of Guru Nanak University, the Full Bench in para 31 has held as under :—

“31. Now the dominant object and purpose of Statute 31 patently is to provide a procedure for a sound assessment of the work and conduct of a probationer in order to enable the appointing authority to either confirm him therein or in the alternative to extend the period of probation or to dispense with his services. To effectuate that purpose sub-clause (2) with which we are primarily concerned prescribes the normal mode and manner of assessing and appreciating the work of the probationer through the instrumentality of his Head of Department or the Controlling Officer. The twin provision in this context is the sending of a report by the latter with a recommendation for confirmation or otherwise with a further prescription that the same should at least be done three months before the date of the expiry of probation.”

(18) It is appropriate to mention that the Statute 31(2) of the Guru Nanak University as it existed at that time was under consideration,

which provided that three months from the date of expiry of the probation period, a report about the work and conduct of the employee appointed on probation with definite recommendation for his confirmation was needed to be sent by the Head of the Department or by the controlling authority. However, the Full Bench considered that the regulation merely postulate procedural formality which cannot be elevated to the pedestal of mandatory rule. The Full Bench placed reliance on a judgment of Hon'ble the Supreme Court in the case of **Hari Singh Mann versus State of Punjab (4)**, which reiterated the right of the employer to judge about the suitability of the employee for the post and his right to judge cannot be defeated and, therefore, construction of such a regulation which tends to advance the object has to be adopted rather than giving significance to the procedural part.

(19) The principle of automatic confirmation laid down by Hon'ble the Supreme Court in **Dayaram Dayal versus State of M.P., (5)**, were not approved by the later judgments rendered in the cases of **Karnataka State Road Transport Corporation (supra) and High Court of M.P. versus Narayan Jhavar (6)**. The view taken in **Dayaram Dayal's case (supra)** was overruled. Hon'ble the Supreme Court has emphasised that merely because the maximum period of probation has expired, would not result into deemed confirmation of an employee. In other words, the employer cannot be deprived of his right to adjudge the suitability of an employee for the post on which he is to be confirmed. Hon'ble the Supreme Court also placed reliance on a Constitution Bench decision rendered in the case of **State of Punjab versus Dharam Singh (7)** and held that mere continuance of probationer after considering his case for confirmation and finding him unsuitable for the same could not be construed to be confirmation by implication by any stretch of imagination and such an intention cannot be imputed

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- (4) (1974) 2 SLR 696
(5) (1997) 7 SCC 443
(6) (2001) 7 SCC 161
(7) AIR 1968 SC 1210

to the rule making authority. Similar views were expressed by Hon'ble the Supreme Court in the case of **Rajinder Singh Chauhan versus State of Haryana (8)**, and reliance was placed on **Satya Narayan Jhavar's case (supra)**.

(20) On principle as well as on precedent it has become evident that there cannot be any automatic confirmation. If no order extending the period of probation before the expiry of one year was passed, there could be no scope for the teacher- respondent No. 4 to assume that he is deemed to be confirmed. The concept of deemed confirmation could be applied only to cases where the employer by his act and conduct has made it absolutely clear after the completion of maximum period of probation that he has considered the employee to be confirmed. Therefore, the writ petition is liable to succeed, especially when the maximum period of probation provided under the Act and the Calendar is two years and the teacher- respondent No. 4 had not completed the same when the order of termination was passed by the petitioner-Management on 19th April, 2005 (P-3).

(21) As a sequel to the above discussion this petition succeeds. The impugned order dated 12th February, 2008 (P-4), passed by the Director is set aside and order dated 19th April, 2005 (P-3), terminating the services of the teacher- respondent No. 4 is upheld.

(22) Before parting we express our disapproval about the conduct adopted by the State of Punjab-respondent No. 1, inasmuch as, no Member has been nominated to man the Tribunal by issuing appropriate notification for hearing of appeals under Section 4(4) of the Act. Accordingly, we issue direction to respondent No. 1 to notify the Member of the Tribunal within a period of six weeks from the date of receipt of a certified copy of this order and the notification shall be placed before this Court on or before 22nd December, 2008.

(23) The writ petition stands disposed of in the above terms.

R.N.R.